

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 04-36 ERIE
)
MAURICE FRANCIS FOLEY)

SUPPRESSION_HEARING

Proceedings held before the HONORABLE

SEAN J. McLAUGHLIN, U.S. District Judge,

in Courtroom C, U.S. Courthouse, Erie,

Pennsylvania, on Wednesday, December 1, 2004.

APPEARANCES:

CHRISTIAN A. TRABOLD, Assistant United States
Attorney, appearing on behalf of the Government.

DAVID A. SCHROEDER, Esquire, appearing on behalf
of the Defendant.

Ronald J. Bench, RMR - Official Court Reporter

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1 P R O C E E D I N G S

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3 (Whereupon, the proceedings began at 9:02 a.m., on

4 Wednesday, December 1, 2004, in Judge's Chambers.)

5

6 THE COURT: All right, Mr. Trabold.

7 MR. TRABOLD: Your Honor, an issue has come up with

8 the first witness, as to the identify of the person that

9 provided the initial information about Foley. And I just

10 wanted to raise it with the court. First, that I don't think

11 the witness should have to reveal the actual identity of the

12 person. My point is that, obviously, the disclosure of the

13 informant's name places the informant at grave risk of possible

14 retaliation. The only real issue is whether the officer --

15 THE COURT: The quality of the information. It

16 comes up all the time. Is there a disagreement among you on

17 this?

18 MR. SCHROEDER: I'm certainly asking for the

19 identity.

20 THE COURT: You're not going to get it.

21 MR. TRABOLD: That's all I wanted to raise with this

22 witness, judge.

23 MR. SCHROEDER: On behalf of the defendant, your

24 Honor, at the time of the initial search of the property on the

25 17th of August, there were a number of agents present on the

1 property, both parole agents and Pennsylvania State Police. As
2 well as four civilians, in addition to Mr. Foley. I have
3 subpoenaed or attempted to subpoena those four witnesses. Two
4 of those witnesses are defendants in this case.

5 THE COURT: Refresh my recollection, who are the
6 defendants?

7 MR. SCHROEDER: Mr. Dunn, Mr. Butler. Mr. Dunn is
8 represented by Attorney Latouf. Mr. Butler is represented by
9 Attorney Placidi. In addition, there is an Angela Carbone, who
10 is present pursuant to a subpoena I served.

11 THE COURT: Who is not a defendant?

12 MR. SCHROEDER: Who is not a defendant. I attempted
13 to subpoena a Christina Weber, whose testimony would be quite
14 relevant and important with respect to the issue of consent.
15 Despite my best efforts, I have not been able to locate Ms.
16 Weber. I received conflicting information as to where she
17 lives, where she works.

18 THE COURT: Where do you believe she is?

19 MR. SCHROEDER: I believe she's in Erie County.

20 THE COURT: Have you had a process server look for

21 her?

22 MR. SCHROEDER: I sent Leo Pierce out looking for
23 her -- I've looked for her myself. I had information she lived
24 on West 8th Street. That did not come to fruition. I had
25 information she worked in this club in Fairview, that did not

5

1 come to fruition. I'm told she might be living in Girard. I'm
2 told she is present in this county because Angela Carbone
3 indicated to me she stopped at her house within the last
4 several days. But I have not been able to serve a subpoena on
5 her. I believe she would have relevant testimony with respect
6 to this. That having been said, the defendant would request,
7 if not a continuance of this proceeding today --

8 THE COURT: Denied.

9 MR. SCHROEDER: Or an opportunity to bifurcate this
10 to attempt to locate her and bring her testimony in at a later
11 point.

12 THE COURT: Let's do this. I'm not going to
13 continue the hearing today. But let me hear the testimony
14 first before I make a decision as to whether -- bifurcated on

15 the issue of what?

16 MR. SCHROEDER: To bifurcate simply for the purpose
17 of attempting to locate her and bring her testimony in at a
18 later point.

19 THE COURT: I'll see, but it may or may not become
20 germane. In any event, the government has the burden on the
21 issue of consent. Is there anything else from a factual matter
22 that you need to bring up with me, witness wise or anything?

23 MR. SCHROEDER: Yes. Mr. Dunn and Mr. Butler are
24 represented by counsel. Mr. Dunn's counsel has told me today
25 that he's advising his client to plead the Fifth Amendment.

6

1 Assuming Mr. Butler's counsel is, we've had ongoing
2 discussions -- they would like to put that on the record with
3 respect to this.

4 THE COURT: They can do it out there. In other
5 words, are you willing -- is the upshot this. If they put on
6 the record that they're invoking the Fifth and I find it a
7 valid invocation, are you willing to let them go?

8 MR. SCHROEDER: I would then ask the court for some

9 grant of limited transactional immunity for purposes of this
10 proceeding.

11 MR. TRABOLD: How can a defense attorney get
12 transactional immunity?

13 THE COURT: That's a pretty good question.

14 MR. SCHROEDER: They are defendants in this case. I
15 would ask the court to grant them, those defendants with
16 respect to this particular case, which would be their concern,
17 immunity for purposes of their testimony solely with respect to
18 the issue of the facts and circumstances of the search.

19 THE COURT: You want me to grant them immunity?

20 MR. SCHROEDER: Yes, the defendants in this case.

21 THE COURT: I had always, I didn't mean to speak
22 over you, I had always thought that that ball, the immunity
23 ball, was thrown into court by the prosecutor?

24 MR. TRABOLD: That's my understanding. I don't
25 think that the situation contemplated is valid under the law.

1 Because unless something would have to prevent me from being
2 able to use the information. I think the government has to be

3 a party to the grant of immunity.

4 MR. SCHROEDER: May I respond.

5 THE COURT: You can. It would have been helpful to
6 know about some of these issues before this morning. But be
7 that as it may.

8 MR. SCHROEDER: As of two days ago, I believed Mr.
9 Dunn was going to testify. And as of one day ago, I believed
10 Mr. Butler was going to testify. So I found this out this
11 morning.

12 THE COURT: I'm not faulting you for that.

13 MR. SCHROEDER: Obviously, I have to do everything I
14 can on my client's behalf. That having been said, the only way
15 I can secure their testimony in any manner whatsoever is if
16 they invoke the Fifth Amendment. I would ask the court to give
17 them some immunity as to what they testify to in the
18 proceeding, it would have limited utility as against them in
19 this particular case. I recognize this is a novel situation, I
20 have no choice.

21 THE COURT: Hold your thought one second. Mr.
22 Trabold, how many witnesses do you have?

23 MR. TRABOLD: I have five witnesses. Two of which

24 will be very brief, I expect anyways.

25 THE COURT: And what you have is somewhat dependent

8

1 on what they say. With respect to, I'm going to hear this out

2 with respect to the search of the residence itself. Is the

3 government relying primarily on consent or on the doctrine of

4 protective sweep -- not the garage, I'm talking about the

5 residence?

6 MR. TRABOLD: We're relying on --

7 THE COURT: You don't need consent if it's,

8 obviously, if it's a legitimate protective sweep?

9 MR. TRABOLD: I think both apply to this matter,

10 there's a valid and lawful consent and also there's a

11 legitimate protective sweep that applies to the residence, as

12 well as the garage.

13 THE COURT: Let's go off the record.

14 (Off the Record.)

15 THE COURT: All right, there are two co-defendants

16 in this case who have been subpoenaed by the defendant to

17 testify at the suppression hearing. Until yesterday defense

18 counsel was under the impression they would testify
19 substantively. They have now been advised by their respective
20 counsels to invoke the Fifth Amendment. Mr. Schroeder has
21 asked me to grant them transactional immunity, insulating them
22 from any prosecution, although, they are already under the
23 prosecution cloud, for anything they say here. As we begin our
24 hearing, what I'm interested in knowing is whether that is a
25 viable option, whether the prosecutor has to be a party to

9

1 that. And then I'll chat with you later about that. Okay.

2 The government, I gather, is not consenting?

3 MR. TRABOLD: Correct.

4 THE COURT: Why don't we get started, I will confirm
5 on the record out there with Attorneys Latouf and Placidi that
6 their clients are invoking the Fifth, and we'll take it from
7 there.

8 (Whereupon, at 9:10 a.m., the proceedings recessed
9 in Judge's Chambers; and at 9:12 a.m., commenced in Courtroom C
10 as follows:)

11 THE COURT: First of all, before we get rolling

12 today, we have Mr. Latouf is somewhere in the courtroom, is

13 that right, or he's not. If he's not, ask him to come in.

14 Mr. Latouf, who are you here representing today?

15 MR. LATOUF: Eric Dunn, your Honor.

16 THE COURT: All right, is my understanding correct,

17 if called to testify, it would be Mr. Dunn's intention to

18 invoke the Fifth Amendment privilege against

19 self-incrimination?

20 MR. LATOUF: Yes, your Honor.

21 THE COURT: All right. Mr. Placidi, who are you

22 representing today?

23 MR. PLACIDI: Mr. Butler, your Honor.

24 THE COURT: Is my understanding correct, that the

25 same would be true with respect to your client?

10

1 MR. PLACIDI: That's correct, your Honor.

2 THE COURT: All right. Are you ready to go, Mr.

3 Trabold?

4 MR. TRABOLD: Yes, your Honor. The United States

5 calls Sergeant Randy Detzel.

6 THE CLERK: Would you raise your right hand, please.

7 RANDY DETZEL, GOVERNMENT WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. TRABOLD:

10 Q. Sir, can you identify yourself, please?

11 A. Yes, I'm Sergeant Randolph Detzel from the Vernon

12 Township Police Department.

13 Q. How long have you worked there?

14 A. Nine years.

15 Q. In what capacity are you currently working there?

16 A. Patrol sergeant with the K-9 Unit.

17 Q. And you're employed full-time by the Vernon Township

18 Police Department?

19 A. Yes, I am.

20 Q. Am I correct in saying that Vernon Township is in

21 Crawford County?

22 A. That is correct.

23 Q. How far is Vernon Township from Saegertown?

24 A. I'll take a guess, maybe 12 miles.

25 Q. Are you familiar with a Hill Road?

1 A. Yes, I am.

2 Q. On April 9th of 2003, did an individual provide you some

3 information about a person they called Mo Foley?

4 A. Yes, they did.

5 Q. Before we get into the information, the person that

6 provided you the information, did you know the person?

7 A. Yes, I did.

8 Q. And you obviously still do?

9 A. Yes, I do.

10 Q. How long have you known the person, approximately?

11 A. As long as I've been doing this job.

12 Q. Which is how long?

13 A. Nine years.

14 Q. Prior to April 9th of 2003, had this person provided you

15 useful law enforcement type information?

16 A. Yes, they did.

17 Q. Information that resulted in successful prosecutions or

18 seizures of contraband?

19 A. Yes, they did.

20 Q. Now, on April 9th of 2003, what information did this

21 person provide you about an individual they called Mo Foley?

22 A. The information provided to me was that the gentleman had
23 been wanted by state parole. They were an absconder, living in
24 Ohio --

25 THE COURT: Say that again, he was a what?

12

1 THE WITNESS: He was an absconder from state parole.

2 And that he had been living in Ohio, coming back to the

3 Saegertown area on weekends.

4 BY MR. TRABOLD:

5 Q. Did the individual provide you any information about any

6 possible illegal activity?

7 A. Yes, they felt that the person possibly was involved with

8 the manufacture of --

9 THE COURT: You said they, do you mean he or she?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: All right, be specific.

12 THE WITNESS: Yes, your Honor. Said that the

13 individual was possibly involved with the manufacture, use,

14 sale or distribution of methamphetamine.

15 BY MR. TRABOLD:

16 Q. And did the person provide you a description of the
17 property where the person was living in Saegertown?

18 A. No.

19 Q. Was there an address provided, though?

20 A. Yes. Not a physical address, the person provided me with
21 a general area where this person would be, something that would
22 be easily identified once we were on that road.

23 Q. Was that physical description, once you were on the road,
24 was that ultimately then verified?

25 A. Yes, it was.

13

1 Q. And did the description that your informant provided you,
2 was that description accurate?

3 A. Yes, it was.

4 Q. Now, what did you do with the information about this
5 person identified as Mo Foley?

6 A. I contacted the Pennsylvania state parole agency, tried
7 the local officer first in Meadville. And I also contacted
8 another law enforcement officer with the Office of Attorney
9 General. Eventually I talked to State Parole Officer Bill

10 Wehrle out of Erie, Pennsylvania.

11 Q. The passing on of this information about somebody

12 absconding from parole is just standard procedure you would

13 have undertaken in any given case?

14 A. That's correct.

15 Q. Ultimately you got in contact with State Parole Agent

16 Bill Wehrle on April 17th of 2003?

17 A. That is correct.

18 Q. You had some discussions with Agent Wehrle and ultimately

19 the decision was made to attempt to apprehend this person known

20 as Maurice or Mo Foley?

21 A. That is correct.

22 Q. And am I correct in saying that you went onto the

23 property on Hill Road in Saegertown sometime after 10 o'clock

24 at night on April 17th?

25 A. That is correct.

1 Q. Prior to that, prior to 10 o'clock at night on April 17th

2 of 2003, had you met with Agent Wehrle and other law

3 enforcement officers to discuss your plan of action?

4 A. Yes, we did.

5 Q. And was the decision made to seek the assistance of the
6 state police?

7 A. Yes, it was.

8 Q. Do you know or were you a part of why the state police
9 were brought in to assist yourself and the parole agents?

10 A. The main reason would be to assist with the
11 jurisdictional issues.

12 Q. And at some point in time, did you become aware that it
13 was believed that Mo Foley or that individuals were present at
14 the property on Hill Road?

15 A. Yes.

16 Q. And the decision was then made to go on to the property
17 sometime around 10 o'clock at night?

18 A. That is correct.

19 Q. Did you participate in that?

20 A. Yes, I did.

21 Q. What was your role on April 17th of 2003 on the property
22 there at Hill Road?

23 A. I was stationed on the corner, it would have been on the
24 north -- if I have these directions correct, it would have been

25 near a bus, there was a bus that looked as though it stored

15

1 some automobile parts. I believe the direction would have been
2 to the west of an outbuilding that was utilized as a garage at
3 the time. My job was to maintain security of that corner.

4 THE COURT: Officer, from whom did you learn that
5 there might be other people on the property and when did you
6 learn that?

7 THE WITNESS: Your Honor, I learned that from State
8 Parole Officer William Wehrle.

9 THE COURT: What were you told?

10 THE WITNESS: That there were three vehicles and
11 possibly several individuals.

12 THE COURT: All right, go ahead.

13 BY MR. TRABOLD:

14 Q. And when you went on the property, there were multiple
15 vehicles on the property?

16 A. That is correct.

17 Q. I want to show you what I marked as Government's Exhibit

18 No. 1 and ask if you can identify what's depicted there?

19 A. Yes, I can.

20 Q. What is that?

21 A. This is a picture of the garage, the outbuilding. It's

22 also showing the bus I spoke of.

23 Q. It's two different photographs, one is the front of the

24 garage and one is the back of the garage?

25 A. That is correct.

16

1 Q. The bus is in the general vicinity of where you were

2 located?

3 A. That is correct.

4 Q. And other than the garage, there's also another building

5 on the property, correct?

6 A. I'm sorry, could you repeat that.

7 Q. Other than the garage, there's also another building on

8 the property, correct?

9 A. There was a residence some distance from the garage.

10 Q. From where you were located near this bus, near the

11 garage, did you have an ability to see what was going on at the

12 residence?

13 A. No, I did not.

14 Q. I'm going to show you what I've identified as Government
15 Exhibit No. 2 and ask you if you can identify what's depicted
16 there?

17 A. Yes, this would be, in the top picture would be the
18 residence.

19 Q. At the property on Hill Road?

20 A. At the property on Hill Road, yes.

21 Q. Now, other than yourself stationed there near this bus,
22 was there any other law enforcement officers stationed there
23 right where you were?

24 A. Yes, Corporal Rossman of the Pennsylvania State Police.

25 Q. And your purpose was simply to be there to make sure you

17

1 had that area covered?

2 A. That is correct.

3 Q. What happens then when you're stationed there by this
4 bus?

5 A. Well, things happened very fast. The first thing I

6 recall is that there was a black Chevy dually, they call it a

7 pickup, it's one with double wheels in the back, with an

8 extended axle. This vehicle started to run. Actually, the

9 lights flashed for a second and it started running. Next, I

10 heard commands being given, that I recognized, by Sergeant

11 Nichols of the Conneaut Regional Police, yelling to get on the

12 ground, get on the ground.

13 Q. Let me stop you right there for one second. Sergeant

14 Nichols was located where in relation to the garage?

15 A. He was somewhere in the area between the residence and

16 the back of the building.

17 Q. The building being the garage?

18 A. Correct.

19 Q. So you hear this truck -- was the truck located in the

20 front area of the garage?

21 A. Yes, it was.

22 Q. The truck starts up and then shortly thereafter, almost

23 immediately thereafter, you hear somebody in the back of the

24 garage yelling "get on the ground, get on the ground?"

25 A. To my side, it would have been possibly, might have been

1 back more to the side, there would have been an area between

2 the two buildings, between the residence and the garage, maybe

3 in that distance in there. I couldn't tell, it was dark, I

4 just heard the yelling.

5 Q. You could not, from your vantage point, see what was

6 going on in the back part of the garage or at the residence?

7 A. That's correct, I could not see that.

8 Q. Now, simultaneous to that or almost simultaneous to that,

9 is anything happening at the front of the garage?

10 A. Yes, there was a large white dog that approached my

11 canine, at that time my main concern was to keep the dogs from

12 fighting. And the next thing I knew there was an older

13 gentleman outside the building, the other officers were inside

14 the building. And two females came up to get a hold of the

15 dogs so there wasn't a dog fight.

16 Q. Now, from your vantage point where you were by the bus,

17 could you see the front door of the garage?

18 A. Yes, I could.

19 Q. How is it that this person ended up coming out the front

20 door of the garage; by that I mean, did anyone knock on the

21 door and announce or anything like that?

22 A. There was knocking and announcing at the same time that

23 that vehicle started, is when the knocking and announcing was.

24 Prior actually to the vehicle starting.

25 THE COURT: Let me interrupt for a second here.

19

1 So you're standing outside with your dog, is that right?

2 THE WITNESS: Yes, your Honor.

3 THE COURT: All right. And nothing has happened,
4 roll the tape back, nothing has happened yet. Walk me through,
5 what happened first, did people first go into the garage, did
6 people first go to the residence or don't you know -- this
7 isn't the sequence of events in the affidavit. Do you know if
8 people first went to the residence?

9 THE WITNESS: I don't know that.

10 THE COURT: Who did you see go to the garage?

11 THE WITNESS: It was a state parole officer, I
12 believe Jerry Verga.

13 THE COURT: Did you see him go up to the door?

14 THE WITNESS: Yes, I did.

15 THE COURT: Did you see him go in?

16 THE WITNESS: No.

17 THE COURT: What's the next thing you saw or heard?

18 THE WITNESS: The vehicle starting.

19 THE COURT: Then what was the next thing you saw or

20 heard?

21 THE WITNESS: I heard yelling, I recognized Sergeant

22 Nichols yelling for the person to get on the ground.

23 THE COURT: Go ahead, Mr. Trabold.

24 BY MR. TRABOLD:

25 Q. Just so we're clear, somebody is at the door knocking on

20

1 the door, the car starts, the dog comes out and then you hear

2 somebody yelling in the back?

3 THE COURT: Is that right?

4 THE WITNESS: No, not exactly. Let me go through

5 this again, it happened in seconds, it was quick.

6 BY MR. TRABOLD:

7 Q. Take your time.

8 A. The first thing I recall is the door was being approached

9 as we were standing by the bus.

10 Q. Just so the record is clear, by the door, you mean the

11 front door of the garage?

12 A. The garage, the man door.

13 Q. Being approached by a parole agent?

14 A. Yes.

15 Q. A knock and announce on the door occurs?

16 A. I couldn't say, I was too far back.

17 Q. Okay. Then what do you recall?

18 A. The vehicle starting, saw the lights flashing, the

19 vehicle started.

20 THE COURT: Where was it parked?

21 THE WITNESS: It would have been to my left in line

22 with the big door that was on that garage.

23 BY MR. TRABOLD:

24 Q. Again, so the record is as clear as possible, was anyone

25 in this pickup truck that started or was it remote started?

21

1 A. It was remote started.

2 Q. I just wanted to make sure the record was clear. The

3 pickup truck starts?

4 A. Yes.

5 Q. Then what do you recall?

6 A. As soon as that truck started is when I recall hearing

7 Sergeant Nichols yelling to get on the ground.

8 Q. And then once you hear somebody yelling to get on the

9 ground, how much time elapses before something begins to occur

10 at the front door of the garage?

11 A. I would say it was the same time, everything was just

12 right now.

13 Q. And what is it you see then happen at the front door of

14 the garage?

15 A. I saw it was an older man at the door, I noticed Corporal

16 Rossman left me --

17 THE COURT: You've got to keep your voice up, what

18 is his name?

19 THE WITNESS: Corporal Rossman.

20 BY MR. TRABOLD:

21 Q. An older man at the front door of the garage, Corporal

22 Rossman then does what?

23 A. He goes immediately to the garage.

24 Q. Let me stop you and make sure we got the record as clear

25 as possible. This older man, was he inside the garage and then

1 opened the door?

2 A. Yes.

3 Q. Okay. So this older person opens the door of the garage,
4 then Corporal Rossman goes and does what?

5 A. He left me at this time, like I said, I have a big dog, a
6 mastiff to deal with, then the two females come up to try to
7 take the dog.

8 Q. At some point in time shortly thereafter, do law
9 enforcement officers go inside the garage from the front door?

10 A. Yes.

11 Q. And would that be roughly at the same time or very
12 shortly after you heard get on the ground, get on the ground in
13 the back?

14 A. Yes.

15 Q. Would it be fair to say that this was all occurring so
16 fast, it's really one right after the other within a matter of
17 seconds?

18 A. That's exactly what happened.

19 Q. And do you stay outside the garage when law enforcement

20 officers make their first entry into the garage?

21 A. Yes, I was outside when they first went in.

22 Q. Once the law enforcement officers go into the garage,

23 what do you then see happen or what do you observe?

24 A. Okay, after the dog was secured, I eventually went into

25 the garage to maintain security. There was two females and two

23

1 males, they were in the garage. And basically what I did was

2 just maintain security.

3 Q. And did you see any items of obvious contraband in the

4 garage in plain view?

5 A. I personally did not.

6 MR. SCHROEDER: I object to leading nature of the

7 questions, your Honor.

8 THE COURT: Overruled.

9 BY MR. TRABOLD:

10 Q. And then you're there for a period of time subsequent to

11 providing security with your dog, correct?

12 A. That is correct.

13 MR. TRABOLD: One moment, your Honor.

14 BY MR. TRABOLD:

15 Q. Sir, I'm going to show you what I've identified as

16 Government Exhibit No. 3, ask you if you can identify what's

17 depicted there?

18 A. This would be the building in the top picture. This is

19 the building that I have been referring to. This would be the

20 man door that I saw open with the older person opening the

21 front door.

22 Q. Am I correct in saying that that vehicle, the black

23 vehicle that's depicted there, that would be the dually or the

24 pickup truck you're talking about?

25 A. That's is the vehicle, yes.

24

1 Q. That's the pickup truck that remote started?

2 A. Yes, sir.

3 MR. TRABOLD: Nothing further, your Honor.

4 THE COURT: All right. Cross-examine.

5 CROSS-EXAMINATION

6 BY MR. SCHROEDER:

7 Q. Sir, with respect to your testimony on direct

8 examination, you indicated it was you who received some
9 information from a confidential informant sometime prior to the
10 actual arrival on the premises, correct?

11 A. That is correct.

12 Q. What is the date that you received that information, sir?

13 A. Without looking at my report, I think it was about a week
14 prior to the time we were at the residence.

15 Q. One week prior to the time you were at the residence?

16 A. I believe so.

17 Q. You've described this informant as being a reliable
18 source of information, correct?

19 A. Yes, sir.

20 Q. You've described this informant as being someone who has
21 provided you reliable information on multiple occasions in the
22 past that you have utilized in investigations, correct?

23 A. On other occasions.

24 Q. Other occasions?

25 A. Other occasions.

1 Q. Not just this occasion, but other occasions?

2 A. Other occasions.

3 Q. You found through the course of that utilization of that
4 information from that confidential informant that it was in
5 fact accurate?

6 A. It was accurate, yes.

7 Q. And your testimony on direct examination was this
8 confidential informant provided you information with respect to
9 the identity of the defendant, Maurice Foley, correct?

10 A. No, the information that I had was that this person was
11 Mo, at first they weren't sure of the gentleman's full name.
12 And eventually it was discovered it was Maurice Foley. First I
13 just had it was Mo Foley.

14 Q. When did you receive information, specific information to
15 Mo Foley?

16 A. I would say approximately a week before, maybe, I would
17 say the 10th of April.

18 Q. What is the identity of this confidential informant?

19 MR. TRABOLD: Objection, your Honor.

20 THE COURT: I already ruled on that.

21 MR. SCHROEDER: For the record I wanted to ask the
22 question.

23 THE COURT: So the record is complete, tell me the

24 basis upon which you feel you need the identity in order to
25 adequately test the informant's reliability?

26

1 MR. SCHROEDER: There could be a number of
2 circumstances which could arise, your Honor, after the
3 information is ascertained. Some or all of the defendant
4 witnesses may have some information regarding the truthfulness
5 or veracity of that individual.

6 THE COURT: For the record, give me the government's
7 position again?

8 MR. TRABOLD: Your Honor, the government's position
9 is the identity of the person is not relevant to a
10 determination as to their reliability in this circumstance.
11 Obviously, even more importantly, the disclosure of the
12 informant's identity exposes the informant to a whole lot of
13 dangerous circumstances as a result of providing the
14 information.

15 THE COURT: Let me ask you, officer, what is your
16 opinion as to whether or not this particular informant could be
17 at some risk if his identity were revealed?

18 THE WITNESS: I feel that it's a very good
19 possibility of that, your Honor.

20 THE COURT: All right. I'm going to sustain the
21 objection, I don't see the relevance. Go ahead.

22 BY MR. SCHROEDER:

23 Q. But, in any event, Sergeant Detzel, you indicated that
24 you had personal knowledge of this person, that they provided
25 you reliable information in the past and that they provided you

27

1 reliable information which you deemed reliable information in
2 this circumstance approximately a week or so before the 17th of
3 April, correct?

4 A. That is correct.

5 Q. You then notified state parole agents with this
6 information, correct?

7 A. Yes, I did.

8 Q. When did you do that, sir?

9 A. I believe the first call was the day that I had
10 information, it was to officers working out of the Meadville
11 branch.

12 Q. In addition, sir, to the information regarding the name
13 of the alleged parole absconder who was Mo Foley, you testified
14 on direct examination that other information was provided with
15 respect to illegal activities taking place at the premises,
16 correct?

17 A. Possible illegal activities.

18 Q. When you testified on direct examination, you said that
19 this confidential informant provided you the name of the
20 individual and information regarding drug activities, correct?

21 A. Correct.

22 Q. This is the person who you previously described as being
23 historically reliable?

24 A. Correct.

25 Q. What specific information was provided to you at that

28

1 time, about a week before the 17th, with respect to drug
2 activities?

3 A. That the person could possibly be involved in the
4 manufacture, distribution of controlled substances, being
5 methamphetamine.

6 Q. And, in fact, ultimately there was methamphetamine found
7 on the premises?

8 A. I can't answer that, I don't know.

9 Q. Now, you conveyed this information to the state parole
10 agents as well, correct?

11 A. Yes, I did.

12 Q. And, again, about a week before the date that this group
13 of individuals arrives at the premises, correct?

14 A. Yes, I did.

15 Q. And what happens historically, then, after you conveyed
16 this information to the parole agents?

17 A. I didn't hear anything from anyone until the 17th.

18 Q. What time on the 17th did you hear from someone?

19 A. I'm not sure of the time, I believe I met with the
20 officers at approximately 5:00 p.m.

21 Q. I'm sorry, you are a law enforcement officer, correct?

22 A. That is correct.

23 Q. You have sought and obtained search warrants in the past,
24 correct?

25 A. Yes, I have.

1 Q. And based on the information that you received from your
2 confidential informant, there would have been nothing to
3 preclude you from seeking a search warrant with respect to
4 these premises and the information that you had been provided
5 by your reliable informant, correct?

6 A. Let me make sure I understand this correctly -- are you
7 asking if this was in my jurisdiction or if it was out of my
8 jurisdiction?

9 Q. Was this in your jurisdiction?

10 A. No, it was not.

11 Q. What jurisdiction was it in?

12 A. State police jurisdiction.

13 Q. Nothing would have prevented you from contacting the
14 Pennsylvania State Police, indicating that you had received
15 this information from a previously reliable informant, and
16 relating that information to them for purposes on their search
17 warrant, correct?

18 A. That's correct.

19 Q. But that did not happen?

20 A. No.

21 Q. The only thing that happened was some information was

22 conveyed to the parole agents and, in fact, on the 17th at

23 5 o'clock there is some sort of contact was made with you?

24 A. That is correct.

25 Q. Was this a telephone contact or a meeting?

30

1 A. There was a telephone call just shortly before we met.

2 At that time is when I received the phone call, we met at

3 approximately 5:00 p.m.

4 Q. Now, in Crawford County there is an assigned magistrate

5 on duty 24 hours a day, correct?

6 A. We have a rotation system where after 4:30 there's an

7 on-call district justice.

8 Q. But if you met at 5 o'clock or thereafter, there would

9 have been a district justice available for you and for the

10 officers from the Pennsylvania State Police to go and seek a

11 search warrant based upon this reliable information that you

12 described that you were in possession of?

13 A. That is correct.

14 Q. And that did not happen?

15 A. No.

16 Q. And, in fact, you testified that a group of individuals
17 then retired out to the address or the property you offered
18 testimony on, correct?

19 A. Correct.

20 Q. Now --

21 MR. SCHROEDER: May I approach the witness, your
22 Honor?

23 THE COURT: You can do it without asking.

24 MR. SCHROEDER: Thank you, your Honor.

25 BY MR. SCHROEDER:

31

1 Q. Sir, I'm handing you which I'm going to mark as Exhibit

2 A, I'm going to ask you -- I'll first indicate for the record
3 that would be Defendant's Exhibit A, it's a handwritten diagram
4 of --

5 MR. TRABOLD: Your Honor, may see the document.

6 THE COURT: Show it to him, he hasn't seen it.

7 MR. SCHROEDER: I'm sorry.

8 BY MR. SCHROEDER:

9 Q. Again, sir, I'm handing you this, which I will be asked

10 to be marked as Defendant's Exhibit A, would I be correct that

11 that is a diagram of a parcel of real estate and a couple

12 buildings?

13 A. Yes.

14 Q. Based upon your personal experience being at this

15 location, does this appear to fairly and accurately depict the

16 location that you went to on the 17th of April, 2003?

17 A. Yes.

18 Q. And with respect to the diagram itself, there is a house

19 depicted and there is a garage depicted some distance from the

20 house, correct?

21 A. Correct.

22 Q. There is what is indicated as a front door on the garage

23 and a back door on the garage?

24 A. Correct.

25 Q. And with respect to the house, did you ever go up to the

32

1 house at the initial arrival at the scene?

2 A. No, not at the initial time, no.

3 Q. With respect to anything that took place at the house,
4 then, you would have no firsthand knowledge as to what took
5 place at the house?

6 A. That is correct.

7 Q. Initially?

8 A. That is correct.

9 Q. Did you ever ultimately go into or to the house that
10 evening?

11 A. Not that evening, no.

12 Q. You went back on another occasion?

13 A. In the morning I went back.

14 Q. Now, with respect to the distance between the house and
15 the garage, what is, as best you as can estimate, what is that
16 distance, sir?

17 A. That's hard to say -- don't hold me to this as accurate,
18 I'm going to say maybe 75, 100 feet.

19 Q. Is there anything to obstruct, trees, other outbuildings,
20 parked vehicles, anything to obstruct the view in the area
21 between the garage and the house?

22 A. It's all settled, the ground is not even there, this
23 building here is higher elevated than what the house is, I
24 believe.

25 Q. So if the garage is higher elevated, then the vantage

33

1 point of the garage would actually be better looking towards

2 the house than the house towards the garage?

3 A. I'm not sure, it's been a year and a half since I've been

4 there, I'm not real sure.

5 Q. Now, there was a bus that was parked close to the garage,

6 correct?

7 A. That is correct.

8 Q. Where was the bus parked, sir?

9 A. It would have been right here. If we're looking at the

10 diagram, the bus was up in here, this area (indicating).

11 Q. Write the words on this diagram bus, and a little

12 schematic of the bus?

13 A. I'd say the bus was right in here (indicating).

14 Q. Now, when you arrived on the 17th, where did you first go

15 to, where did you position yourself on this diagram?

16 A. Well, first of all, is this Hill Road out here, just so

17 I'm correct?

18 Q. It's designated as Hill Road; does that fairly and

19 accurately depict the location of Hill Road and these

20 properties based on your recollection?

21 A. I don't know if you want me to mark this, but I can mark

22 where that police car was.

23 Q. Please do?

24 A. (Witness complies.) I'll mark K-9 on here so you know it

25 was me.

34

1 Q. For the record, K-9 is the Vernon Township patrol vehicle

2 that you were driving on that night?

3 A. That is correct.

4 Q. Thank you.

5 A. I parked right here, and then I went over and there was

6 tree by the bus, I believe, I was on the driver's side of the

7 bus.

8 Q. So if this is designated as the front door, you initially

9 positioned yourself near the front door of the garage?

10 A. No, I was off to the right, I was a fair distance from

11 the front door, I was not real close.

12 Q. But closer to the front than the back?

13 A. Oh, yes, I couldn't see the back.

14 Q. Did you see a vantage point where you could see the back?

15 A. No.

16 Q. Whatever took place at the back door, you could not see?

17 A. That is correct.

18 Q. Could you hear what was taking place there?

19 A. I could hear the commotion, yes. I recognized Sergeant

20 Nichols' voice. I'm very familiar with him, that's why I knew

21 his voice when I heard it.

22 Q. Sir, as best as you can recall, could you with little

23 circles put the place where you were standing and the place

24 where you recall other officers were standing initially?

25 A. I'm going to put a couple lines, this is the K-9, I was

35

1 standing here, and Corporal Rossman was to my right.

2 THE COURT: Put the initials, otherwise, I won't

3 know what circle matches which individual.

4 THE WITNESS: (Witness indicates.) That's where we

5 were initially.

6 BY MR. SCHROEDER:

7 Q. Now, and again we're speaking initially, did anyone go to
8 the back of the garage when you reported initially?

9 A. I can't be sure of that. Corporal Rossman set up where
10 everybody was going to go, there were several officers there.
11 That's where I was assigned to be, that's where I was.

12 Q. How many officers were there?

13 A. I'm not sure right now.

14 Q. I believe your testimony on direct examination was that
15 there was a lot of commotion within a very short time period,
16 correct?

17 A. Almost instantaneous, if you would.

18 Q. Was there someone apprehended at the back of the garage
19 that you could hear taking place?

20 A. Someone was apprehended, but I cannot say with absolute
21 certainty it was behind the garage or on the side of the
22 garage, I don't know, it was dark.

23 Q. Well, they weren't apprehended by you?

24 A. That is correct.

25 Q. They weren't apprehended by Corporal Rossman?

1 A. That is correct.

2 Q. So they had to be apprehended by other officers?

3 A. That is correct.

4 Q. So would it be safe for me to conclude that there were

5 other officers positioned somewhere in the location of this

6 garage?

7 A. That would be, yes.

8 Q. Are there other entrances or exits to this garage, other

9 than the front doors and back doors?

10 A. I don't know.

11 Q. I'm going to show you Government's Exhibit 3, and you've

12 previously identified that exhibit, correct?

13 A. Yes.

14 Q. And that is apparently, based upon your testimony, this

15 diagram and the photograph, this apparently is the front of the

16 garage that depicts the bus's location, correct?

17 A. Correct.

18 Q. And you would have been standing somewhere near this bus,

19 near the front door, where you had a clear vantage of the front

20 door, correct?

21 A. I was back here off to, just like I drew it there, this

22 white car wasn't there, I don't know where it came from, this

23 white car -- I can't say it wasn't there, I don't remember this

24 white car. I remember the bus, I remember the doors, but I was

25 off in this area, just like I drew it, it was over here.

37

1 Q. On the front of the building there is a large garage

2 door?

3 A. Correct.

4 Q. And a man door, and then another door it appears?

5 A. Correct.

6 Q. And at this time when these photographs were taken, the

7 two garage doors are closed?

8 A. That is correct.

9 Q. Was that the condition when you were there?

10 A. When we initially went there, both these doors were

11 closed and the man door was closed.

12 Q. And the white car was not there, so your view from this

13 area was unimpeded by the white car?

14 A. I can't say that, I don't remember this white car.

15 Everything was happening, and I was looking out for a lot of

16 different things, I don't know if that car was there or not.

17 But I was off here, I know exactly where I was, I was off here

18 in this area.

19 Q. All right. Now, this second photograph, that is part of

20 Government Exhibit 3, it shows what appears to be the side of

21 that garage, correct?

22 A. It appears to be, yes.

23 Q. Would you agree that there are no doors or windows on

24 that side that are visible from that photograph?

25 A. Yes, I agree.

38

1 Q. And the bottom portion of Government's Exhibit 2 is

2 basically that same view of that garage, correct?

3 A. Yes, it is.

4 Q. And that clearly shows the entire length and there is no

5 exit or entrance door there or window for that matter. And

6 with respect to the two photographs on Government Exhibit 1, on

7 the back side of that exhibit, those photographs show the rear

8 of the garage, correct?

9 A. I'd have to agree this is the same building, but I never

10 was to the back. So I don't know about this.

11 Q. Relative to the bus, the diagram you marked here, the
12 position of the bus and the front doors, would it be accurate
13 to say --

14 A. Yes, I would say.

15 Q. The photographs show the building?

16 A. Yes.

17 Q. Would it be accurate to conclude that this photograph
18 here, the second photograph, shows the other side of the
19 building, not depicting the other ones which show no doors or
20 windows on that side as well?

21 A. This is the same side we just spoke of.

22 Q. That's the same side?

23 A. I believe it is. If you look at the back of railing from
24 up above, it's back here. This is the same thing, it would be
25 the same. Yeah, I agree with you there.

1 Q. Other than the front and the back of this structure,
2 there are no entrance ways or exits, based on these photographs
3 and your recollection?

4 A. Again, I don't know the building, I can only say what I

5 saw in the front. I don't know about the rest of the building.

6 Q. Now, you make reference to a dually truck?

7 A. Yes.

8 Q. Which started?

9 A. Yes.

10 Q. Where was that truck located?

11 A. It is in front of that -- because I was watching the back

12 of it from my vantage point, what caught my attention is the

13 lights flickered for a second, came on for a second --

14 Q. It was parked outside the garage?

15 A. Outside, and the motor started.

16 Q. What was your proximity to that vehicle?

17 A. Couple car lengths maybe.

18 Q. Did you ever test or look at that vehicle to see whether

19 it was equipped with a remote starter?

20 A. I never did, no.

21 Q. Other than hearing it, what indicated to you that it

22 started?

23 A. The motor, I could hear the engine.

24 Q. Were there any other vehicles in proximity to that?

25 A. I don't recall if there were. But I definitely know it

1 was that vehicle.

2 Q. All right. Are you aware of anyone else ever looking at
3 that vehicle to see whether it was equipped with a remote
4 starter?

5 A. I'm not aware of it.

6 Q. Now, your testimony on direct examination was that
7 everything happened in seconds, is your exact quote; do you
8 hear initially a knock on the front door of the garage?

9 A. I couldn't hear it, no.

10 Q. Did you see someone knock on the front door of the
11 garage?

12 A. There was, I'm almost positive there was state parole
13 agent Jerry Verga was at the front door.

14 Q. There was testimony about a knock and announce, were the
15 prosecutor's words?

16 A. He was definitely at the front door and I know that
17 everything just happened very quickly.

18 Q. Where you were you could see the front door?

19 A. Right, I saw, I believe it was Jerry Verga, I think

20 that's his name, I don't work with these gentlemen every day,

21 so I believe it was Jerry Verga.

22 Q. You saw one individual at the front door?

23 A. I saw Jerry Verga at the front door, yeah.

24 Q. And you used the words knock and announce after the

25 prosecutor used them, correct?

41

1 A. They was there at the front door.

2 Q. Was it Jerry Verga that knocked and announced?

3 A. As far as I know, yes.

4 Q. Could you see him do that?

5 A. I seen him at the front door, again, everybody had

6 different clothes on, I'm not sure, it's been a year a half

7 since I seen these gentlemen. I don't know for sure, I'm

8 pretty sure it was Jerry Verga. He was a law enforcement

9 officer, definitely.

10 Q. You heard someone knocking?

11 A. Someone at the front door.

12 Q. And when they announced, what did they announce?

13 A. I can't recall.

14 Q. If everything happened within a few seconds, what happens
15 next in this very compressed time period?

16 A. What I recall was the front door, the very first thing I
17 heard was that truck, the lights came on in the truck, the
18 motor started on the truck, I heard get down, get down, I
19 recognized Sergeant Nichols' voice. There was a man at the
20 door, Corporal Rossman left where I was to go there and I had a
21 dog to contend with. Everything was happening at one time.

22 THE COURT: Where did that dog come from?

23 THE WITNESS: That, your Honor, I don't know. I
24 assume it came from the residence because there were two
25 females that came up, they were concerned that I hurt the dog,

42

1 it wasn't my intention to hurt any dog --

2 THE COURT: What kind of dog was it?

3 THE WITNESS: It was a big white dog, I believe it
4 was a mastiff, a mastiff or dog of that size, a big dog.

5 THE COURT: Go ahead, Mr. Schroeder.

6 BY MR. SCHROEDER:

7 Q. Where was Sergeant Nichols' position when you heard him

8 say "get down, get down?"

9 A. He would have been on the other side of that black truck,

10 somewhere between the residence and this garage.

11 Q. Do you know who he ultimately said "get down, get down"

12 to?

13 A. Eventually, later on, after it calmed down, I saw that it

14 was the gentleman seated at our table that was in the back of

15 the car.

16 Q. The defendant?

17 A. Yes, sir.

18 Q. So in this compressed time period, the engine starts,

19 there's a knock and announcement of some sort, and within just

20 a few seconds you hear "get down, get down" by Sergeant

21 Nichols, who you ultimately came to understand had directed

22 that to the defendant, Maurice Foley?

23 A. That is correct.

24 Q. And did you observe whether or not Maurice Foley got down

25 and complied?

1 A. I couldn't see any of this.

2 Q. Based upon what you were doing, did you have any reason

3 to believe he did not?

4 A. No, I had no reason to believe he did not.

5 Q. In fact, based upon your experience, if he had not

6 complied, you certainly would have heard something further with

7 respect to that, correct?

8 A. That would be correct.

9 Q. Based upon your experience, when an individual complies,

10 there is no further need to yell further commands to comply?

11 A. That is correct.

12 Q. So Maurice Foley, then, based upon what you at least

13 heard, would have exited that garage within that compressed

14 time period, correct?

15 A. No, exited the building I would say that.

16 Q. If the building only has doors on the front and the back,

17 and you were positioned in the front, so he would have exited

18 the back?

19 A. That would be a logical assumption, yes.

20 Q. And immediately complied because you didn't hear any

21 other directions, correct?

22 A. I didn't hear any others, no.

23 Q. And ultimately you saw him there in custody?

24 A. That is correct.

25 Q. Now, with respect to your position in the front door of

44

1 the garage, what happened next?

2 A. Well, like I testified, we took care of the dog

3 situation. The door was opened, I went in and joined the

4 officers inside. Again, I'm sure this is Jerry Verga inside,

5 and I joined them. My job is simply I downed my dog in what we

6 call a down state, just to maintain security.

7 Q. You previously indicated that the doors were closed?

8 A. Well, not the man door, the man door was open.

9 Q. The man door was open?

10 A. I went in through the man door.

11 Q. Initially, when you got there, all three doors were

12 closed?

13 A. That is correct.

14 Q. So someone opened the man door?

15 A. Correct.

16 Q. Do you know who?

17 A. No, I do not know.

18 Q. Within this short time period, you said that there were
19 officers inside the building at that time?

20 A. I know there was Jerry Verga and Corporal Rossman.

21 Corporal Rossman left me because, as I testified, to go when
22 the door opened, when the man had come to the door.

23 Q. So when this person came to the front door, did you
24 observe him being taken into custody and secured?

25 A. No, I didn't.

45

1 Q. What did you observe take place there?

2 A. I was concerned my \$10,000 dog is going to get ate up by
3 this white dog. I had all I could do to keep the dogs part.

4 Q. So you were distracted?

5 A. Exactly.

6 Q. After the dogs were secured, then you went to the garage
7 and agents were inside the garage?

8 A. That is correct.

9 Q. At that time were the main doors open or just the man
10 door still?

11 A. When I went in, it was just the man door.

12 Q. How many agents were inside the garage at that time?

13 A. At that time I spoke with Agent Verga. There could have

14 been other agents that had been in there, I don't know. But I

15 saw Agent Verga.

16 Q. Was the garage secured at that point?

17 A. It was secured with the four people I was watching, yes.

18 There were people upstairs, I know that.

19 Q. Above the garage?

20 A. Correct.

21 Q. When you say four people you were watching, who were the

22 four people you were watching?

23 A. I don't know, two males and two females.

24 Q. So you're not including the defendant in that?

25 A. No, the defendant was in another car.

46

1 Q. These were civilians who are present?

2 A. That is correct.

3 Q. At that time when you went in, the two male civilians,

4 other than the defendant, are secured and the two females are

5 secured?

6 A. That is correct.

7 Q. And officers are inside the barn or the garage?

8 A. There was officers inside.

9 Q. Now, you testified that at that time, though, you're

10 certain there were other people in the building?

11 A. There was a ladder leading upstairs and I could hear

12 someone upstairs, I could hear footsteps upstairs.

13 Q. Now, if the information indicated that one of the agents

14 might have gone upstairs, could you have heard the agent?

15 A. I wouldn't have known who it was, I couldn't see. It was

16 just a ladder above the ceiling, I don't know who was up there.

17 Q. Did you ever come to find out that there were any

18 civilians on this property, other than the four people you just

19 described?

20 A. I don't know.

21 Q. But did you ever see any other civilian come down from

22 the second floor or be taken into custody?

23 A. No, I just saw the four.

24 Q. And with respect to the timeframe that all this takes

25 place, the best that you're able to estimate from the beginning

1 of the knock and announce, to the point in time when all of the

2 four civilians are secured, how much time elapses?

3 A. That's very hard to estimate. It wasn't more than

4 minutes, I mean it was quick, everything was very quick.

5 Q. As you said on direct, it al happened in seconds?

6 A. Very fast, yes.

7 Q. We're not talking about a significant lapse of time,

8 everybody is secured within seconds?

9 A. Well, probably minutes. I mean what seems like, there

10 are so many things you're doing, it's probably, I'm sure it was

11 more than a few minutes. It wasn't long, it wasn't drawn out

12 or anything.

13 Q. Now, how long do you stay in the vicinity of the garage

14 after everybody is secured, you walked in the garage, there are

15 officers and agents inside the garage, how long do you stay

16 there?

17 A. I stayed with there Agent Verga until I was released by

18 Corporal Rossman, I must have been 20 minutes in there.

19 Q. Would it be correct for me to conclude that in that 20

20 minutes you were in there, other agents are in there?

21 A. There were people coming and going, yes.

22 Q. And they're walking around, looking at various places

23 inside this garage, correct?

24 A. No, they just, the people are moving about. My job, as I

25 pretty much stated, was to watch these four individuals.

48

1 Q. What were the four agents doing inside this garage for a

2 20 minute period?

3 A. Well, I didn't say there were four agents, I said there

4 were two men and two women I was watching. There was Agent

5 Verga with me and there were people I know upstairs, but who

6 was upstairs, I don't know, because I was downstairs watching

7 them, so I don't know who was up there.

8 Q. How long were they up there?

9 A. I can't say that, I don't recall.

10 Q. Are you talking minutes?

11 A. Not a long time, again, this is something I didn't keep

12 any track of who's upstairs.

13 Q. Did you ever go to the upstairs?

14 A. I went to the upstairs I believe the next day, I returned

15 in the morning.

16 Q. When you returned the next day and went to the upstairs,

17 what was up there?

18 A. There was an apartment, what appeared to be an apartment

19 that was partially done.

20 Q. Did it have separate rooms or was it just one wide room?

21 A. I recall a kitchen and looked to be like a sleeping area.

22 Again, this is a year and a half, I didn't pay any attention to

23 it, I just seen what was there because one of the officers

24 said, well, this is what we have going on.

25 Q. But, in any event, however long it was while you're

49

1 downstairs with some agents, you hear footsteps upstairs for

2 some period of time?

3 A. Well, there are people upstairs at some point, yes, but

4 for how long, I don't know.

5 Q. Well, for some period of time?

6 MR. TRABOLD: Objection, your Honor, asked and

7 answered.

8 THE COURT: Move it along.

9 BY MR. SCHROEDER:

10 Q. With respect to the agents or officers downstairs, what
11 were they doing in your presence while you were standing there?

12 A. While I was there, Agent Verga just made a quick, just
13 like if you would just walk around the room to make sure there
14 wasn't anybody else in the room. It was more for our security
15 than any other reason.

16 Q. But everybody stayed there for 20 minutes you said?

17 A. Yes.

18 Q. And how many people stayed in there for 20 minutes?

19 A. The two men and the two women that I was watching, with
20 Agent Verga.

21 Q. So you brought the civilians into the garage?

22 A. That's where they were, yes. When I walked into the
23 garage, they were there.

24 Q. And other officers were present in the garage during that
25 20 minute period?

1 A. There were officers probably coming and going, yes.

2 Q. So they were leaving the garage, they were coming into

3 the garage, they were walking about the garage?

4 A. I wouldn't say they were walking about the garage, but

5 they went back and forth talking to each other, calling other

6 officers in.

7 Q. Now, these officers consisted of an officer from your

8 department, you, from the Pennsylvania State Police and

9 Pennsylvania Parole Board, correct?

10 A. Yes, there were --

11 Q. Were there any other departments represented there --

12 THE COURT: Hang on a second, you have to wait until

13 he finishes, you have to wait until he finishes.

14 MR. SCHROEDER: Yes, your Honor.

15 BY MR. SCHROEDER:

16 Q. Any other departments represented, other than the three

17 you indicated?

18 A. Yes, there was.

19 Q. Which department?

20 A. Conneaut Lake Regional Police Department was there. And

21 Cambridge Springs Police Department was there.

22 Q. As best as you can recall, how many total officers or

23 agents were on the property that night?

24 A. I can't say accurately, I don't know.

25 Q. Over 10?

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1 A. I don't believe 10, maybe -- it could have been 10, I

2 suppose, not more than that I don't think.

3 MR. SCHROEDER: One moment, your Honor. Nothing

4 further your Honor.

5 THE COURT: Anything else?

6 MR. TRABOLD: Just one question.

7 REDIRECT EXAMINATION

8 BY MR. TRABOLD:

9 Q. You went back the next morning to assist in the execution

10 of a search warrant with your narcotic dog?

11 A. That is correct.

12 MR. TRABOLD: Nothing further.

13 THE COURT: Thank you, sir, you're excused.

14 MR. TRABOLD: Your Honor, may this witness be

15 excused?

16 THE COURT: Yes, you can.

17 MR. TRABOLD: Your Honor, the United States calls

18 Bill Wehrle.

19 THE COURT: You can after a short break.

20 (Whereupon, the proceedings recessed at 10:05 a.m.

21 in Courtroom C; and reconvened at 10:08 a.m., in Judge's

22 Chambers.)

23 THE COURT: This is on the subject of immunity.

24 This is from United States v. Bansano, 3rd Circuit, 72 F.2d

25 826. This here is the rule in the circuit. Before the court

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1 can grant immunity to a defense witness, it must be clear that

2 an application has been made to the district court naming the

3 proposed witness and specifying the particulars of the

4 witness's testimony. In addition, the witness must be

5 available, and the defendant must make a convincing showing

6 sufficient to satisfy the court that the testimony which will

7 be coming forth will be exculpatory and essential to the

8 defendant's case. Immunity will be denied if the proper

9 testimony is found to be ambiguous, not clearly exculpatory,

10 cumulative, different, or if it is found to relate only to the

11 credibility of the government's witnesses. Now, you want to

12 call two co-defendants, is that right?

13 MR. SCHROEDER: That's correct.

14 THE COURT: Then, as a starting point, what would
15 they say, you have to give me a proffer as to what you believe
16 they would say -- and I realize this is a suppression hearing
17 rather than a trial, the same principle obtains. How would it
18 be exculpatory insofar as the issues driving your suppression
19 motion are concerned?

20 MR. SCHROEDER: It is uncontroverted that there was
21 no search warrant initially in this case. Government has filed
22 a responsive brief indicating that they feel the search that
23 was conducted, whatever search was conducted prior to the
24 warrant being obtained on the next day was done on the basis of
25 a protective sweep, was done pursuant to parole officers'

53

1 authority, or were done pursuant to consent. These two
2 witnesses were present in the barn or garage area and they
3 would testify as to the timeframe that everything took place
4 and the fact that the individuals were secured. I will concede
5 the fact that we may have to establish this through other

6 witnesses.

7 THE COURT: What else, these witnesses would have
8 been only in the garage or the barn, is that right?

9 MR. SCHROEDER: Right.

10 THE COURT: Do you have any other firsthand
11 knowledge, other than what they could observe or see from their
12 position inside the garage?

13 MR. SCHROEDER: The defense is limited, we don't
14 have access to all the reports, I don't know whether they were
15 ultimately taken into the house.

16 THE COURT: You can't just put them on speculating,
17 under this rule, as to what they may say. But if the only
18 reason to call them is to establish that at some point there
19 were so many people in the garage and that area was secured,
20 that's cumulative at least. And I don't see it as being
21 clearly exculpatory or essential within the meaning of the
22 immunity rule.

23 MR. SCHROEDER: On the testimony that's been
24 proffered on the record so far, I would be inclined to agree
25 with you at that point. Counsel never knows what testimony is

1 going to go on the record until it goes on the record. I have
2 to do, what I'm trying to do is establish the underlying facts.

3 THE COURT: What I'm trying to get at earlier,
4 rather than later, is if these people and if the Fifth
5 Amendment invocation is appropriate. You're not going to know
6 anymore at the end of the hearing then what you know right now,
7 as you believe what these people would testify to, right?

8 MR. SCHROEDER: Perhaps slightly more in terms of
9 this last witness was a bit vague with respect to who was
10 where, a bit vague with respect to timeframes. But we seem to
11 have established that within seconds that there was a knock,
12 that Foley exited the rear of the garage, which is what these
13 witnesses would testify to, and that within seconds or a very
14 short time period, that the other two individuals were secured.

15 THE COURT: All right. Based upon your proffer and
16 based upon the case law, I do not see -- first of all, the
17 granting of judicial transactional immunity based upon a
18 request by defense is rare. But I do not see that the
19 circumstances are justified here. That said, after this I'm
20 going to put that on the record, these people are free to go.
21 That said, at the conclusion of this hearing if there is some

22 reason, something happens that was unanticipated, I may revisit
23 it. But I think it's very unlikely they're going to be called.

24 MR. SCHROEDER: I propose this and this is
25 consistent with what you just suggested. If this is still an

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1 issue, the other witness, who I'm now told she may be
2 incarcerated somewhere, that's the first I've heard of this.
3 The defendant's sister came and indicated that she might be
4 incarcerated.

5 THE COURT: Where?

6 MR. SCHROEDER: Possibly in the Erie County Prison.

7 THE COURT: That's easy enough to find out.

8 MR. TRABOLD: Just for the record, the government
9 has a huge objection to continuing this hearing for any reason
10 whatsoever. Counsel knew, when counsel filed this motion, so
11 how can a defense attorney seek a continuance for his inability
12 to obtain a witness when he's the one that filed the motion,
13 the motion has been pending for weeks.

14 THE COURT: I think a continuance is going to be
15 most unlikely. That said, as a I indicated at the outset, I'm

16 going to hear what comes in. I am not even certain or at all
17 certain at this point that the testimony of -- whatever her
18 name is, Christina Weber?

19 MR. SCHROEDER: That's correct.

20 THE COURT: Is going to be necessary or pivotal.

21 MR. SCHROEDER: Her testimony would be significant
22 with regard to the search of the house that takes place that
23 night based solely on her consent.

24 THE COURT: In the government's papers, the search
25 of the house is based on a protective sweep, isn't it?

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1 MR. TRABOLD: Correct.

2 THE COURT: Have you interviewed her, by the way?

3 MR. SCHROEDER: I have not.

4 THE COURT: Do you have any idea what she would say?

5 MR. SCHROEDER: No.

6 THE COURT: Because then that cuts somewhat the
7 other way.

8 MR. SCHROEDER: Let me address it this way. I've
9 been told by various people what she might say. But I am not

10 confident enough to represent to this court exactly what she
11 would say.

12 THE COURT: All right, back to timing again. You
13 got four more people?

14 MR. TRABOLD: Correct.

15 THE COURT: Are you going to be wrapped up by noon?

16 MR. TRABOLD: I think so, I hope. I'm doing
17 everything I can.

18 THE COURT: All right, let's go.

19 (Recess in Judge's Chambers at 10:15 a.m.; and
20 reconvened at 10:18 a.m., in Courtroom C.)

21 THE COURT: Before we get going, Mr. Placidi, Mr.
22 Latouf, I have determined that the invocation of the Fifth
23 Amendment privilege insofar as your clients are concerned is
24 appropriate. I've also determined that it would be
25 inappropriate for me to grant, at the defendant's request,

1 transactional immunity with respect to their proposed testimony
2 today. That said, does either counsel have any objection to
3 these gentlemen and their clients being excused?

4 MR. TRABOLD: I don't have any objection to there
5 being excused. Just for purposes of preserving the record, I
6 think it may be of some value at least having counsel put on
7 the record specifically that I have advised my client to take
8 the Fifth Amendment and my client is planning on doing that.

9 THE COURT: I thought I did that. Didn't I do that
10 earlier with you?

11 MR. PLACIDI: Yes, your Honor.

12 MR. TRABOLD: Okay.

13 THE COURT: They did it from the gallery. It is on
14 the record and I think they are authorized to speak for their
15 clients in that regard. That being said, do you have an
16 objection -- the record will reflect as it does that they would
17 invoke the Fifth Amendment. Do you have any objection to them
18 leaving or do you want them to remain pursuant to your
19 subpoena?

20 MR. SCHROEDER: Subject to the right to revisit this
21 issue if a legitimate evidentiary or legal reason is
22 established or exists potentially to the invocation of that
23 Fifth Amendment privilege and seek their testimony with respect
24 to some point that might be proffered on the record on this

25 case, subject to that consideration, I would have no objection

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1 to them being released.

2 THE COURT: Counsel, you of course are free to

3 remain, I'm not kicking you out, I'm just indicating that your

4 clients do not have to remain.

5 MR. PLACIDI: Thank you, your Honor.

6 THE COURT: All right, let's go.

7 MR. TRABOLD: Your Honor, the United States calls

8 Bill Wehrle.

9 THE CLERK: Please raise your right hand, sir.

10 CHARLES WILLIAM WEHRLE, GOVERNMENT WITNESS, SWORN

11 DIRECT EXAMINATION

12 BY MR. TRABOLD:

13 Q. Sir, can you state your name and spell your last name?

14 A. Charles William Wehrle, W-e-h-r-l-e.

15 Q. Where are you employed, sir?

16 A. I'm employed by the Commonwealth of Pennsylvania, State

17 Board of Probation and Parole, I'm assigned to the Erie office.

18 Q. How long have you worked there?

19 A. Thirty-two years.

20 Q. And am I correct in saying that your duties include the
21 supervision of individuals who are on state parole and/or
22 probation?

23 A. That's correct.

24 Q. And you've done that for 32 years?

25 A. Yes, sir.

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1 Q. And along those lines, back in mid April of 2003, you
2 received some information from a Sergeant Randy Detzel of the
3 Vernon Township Police Department?

4 A. Yes, sir.

5 Q. What information did Sergeant Detzel provide to you?

6 A. He informed me he had received information that a
7 fugitive who we were looking for, Maurice Foley, was in the
8 Saegertown area.

9 Q. And do you recall when it is that Sergeant Detzel would
10 have provided you this information -- when did he provide that
11 information to you?

12 A. Why did he?

13 Q. No, when?

14 A. When?

15 Q. Yes.

16 A. It would have been in the early afternoon.

17 Q. Of April 17, 2003?

18 A. That's correct.

19 Q. Did you take any steps or any action in furtherance of
20 that information?

21 A. Yeah, I discussed the case with the supervising agent,
22 who was Jerry Verga.

23 Q. I'm sorry, go ahead?

24 A. We then contacted Trooper Shane Reinhart, who's in charge
25 of the state police fugitive apprehension unit and asked him to

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1 assist us, and we made arrangements to meet with Sergeant
2 Detzel.

3 Q. And was the decision made, then, at that point in time
4 that steps were going to be taken to try and apprehend Maurice
5 Foley?

6 A. Yes, sir, we were going to attempt an apprehension.

7 Q. I'm assuming that prior to you attempting the

8 apprehension, Mr. Foley's file was looked at to determine

9 exactly what his status was and what his probationary

10 conditions were and things like that?

11 A. Agent Verga was the supervising agent, so he was familiar

12 with Mr. Foley.

13 Q. Now, I want to show you what has been marked as

14 Government's Exhibit No. 4 and ask you if can identify it for

15 me?

16 A. Yes, sir, these are standard conditions governing parole,

17 reparole for the state of Pennsylvania.

18 Q. And are those the standard conditions that apply for

19 Maurice Foley?

20 A. Yes, sir.

21 Q. And am I correct that this is Maurice Foley seated at

22 counsel table?

23 A. Correct.

24 Q. And the conditions that are represented in Government's

25 No. 4, would that be a document that would be provided to a

1 person when they're put on parole or state probation?

2 A. Yes, they sign copies and copies are maintained in the
3 file in the office they're supervised under. I believe they
4 maintain a copy in Harrisburg and the parolee is provided with
5 a copy.

6 THE COURT: Keep your voice up, speak into the
7 microphone.

8 BY MR. TRABOLD:

9 Q. So the parolee is provided a copy of Government's 4?

10 A. Yes, sir.

11 Q. And Mr. Foley's name is listed on Government's 4?

12 A. Yes, sir.

13 Q. And it lists his approved residence as a place on Gorman
14 Drive or Gorman Road, correct?

15 A. Yes, sir.

16 Q. And does it indicate or was it signed by Mr. Foley
17 anywhere?

18 A. Yes, sir, it's signed on the second page.

19 Q. And is it dated?

20 A. Yes, sir, it is, 3/27/00.

21 Q. And am I correct that one of the standard conditions for
22 any parolee in the state of Pennsylvania, as represented by

23 Government's 4, that the person agrees to a search of their
24 residence by a parole officer?

25 MR. SCHROEDER: I object to the leading nature.

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1 THE COURT: Overruled.

2 THE WITNESS: Yes, sir, there is.

3 BY MR. TRABOLD:

4 Q. And that stand condition is represented on Government's 4
5 at the bottom of the first page, correct?

6 A. Yes, sir, it's at the bottom of the first page.

7 Q. Just so the record is clear, does an individual sign that
8 document when they're about to be released or after they've
9 already been released?

10 A. Prior to their release.

11 Q. Mr. Foley on the date in March of 2002 when he signed it,
12 would have been prior to his release from state incarceration?

13 A. The conditions are gone over by an institutional parole
14 representative and usually they do them immediately prior to
15 their release, it could be on the day of release, though.

16 Q. Okay. I'm going to show you what I marked as

17 Government's Exhibit No. 5, and ask you if you can identify

18 what that is?

19 A. Yes, sir, this is a wanted notice for parole absconder,

20 it's a standard form we use when a parolee absconds from

21 supervision. And this particular one is for Maurice Foley.

22 Q. Does it indicate a date on there that Mr. Foley absconded

23 from his parole supervision?

24 A. It doesn't have the date that he absconded, it has a date

25 that this wanted poster was issued, however.

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1 Q. And when would that be?

2 A. 5/9/00.

3 Q. What is encompassed in page number two of Government's

4 Exhibit No. 5?

5 A. Page two is a warrant for arrest of paroled prisoner.

6 It's a form that when an individual absconds from supervision,

7 that we usually provide to the local police department.

8 Q. And that was issued when?

9 A. 5/9/00.

10 Q. So from May 9th of 2000 forward, there was a warrant for

11 Mr. Foley's arrest as a parole absconder?

12 A. Yes, sir, that's correct.

13 Q. And based on that fact and the information you received
14 from Sergeant Detzel, you and other folks at the State Board of
15 Probation and Parole made a decision to attempt to apprehend
16 Mr. Foley?

17 A. That's correct.

18 Q. When did you meet with Sergeant Detzel on April 17th of
19 2003?

20 A. I would say it would have been approximately, I'm not
21 exactly sure, I would say approximately 5 o'clock.

22 Q. And what was the purpose in that first meeting between
23 yourself and Sergeant Detzel?

24 A. We wanted to discuss the information that he had
25 concerning Mr. Foley's whereabouts and make arrangements for

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1 the apprehension.

2 Q. And who was present during that meeting?

3 A. It was myself, Trooper Shane Reinhart, from the fugitive
4 apprehension unit here in Erie, Agent Verga, Sergeant Detzel

5 and myself.

6 Q. And subsequent to that initial meeting at approximately

7 5 o'clock on the 17th, did anyone in that group you just

8 described take steps to go to the property on Hill Road and

9 surveil it?

10 A. No, we didn't know where it was. One of the reasons for

11 meeting with Officer Detzel, he was going to show us where the

12 property was.

13 Q. Did he in fact do that?

14 A. Yes, sir, he did.

15 Q. That was subsequent to your 5 o'clock meeting?

16 A. After, yes, sir.

17 Q. The property as you saw it, after being led there by

18 Sergeant Detzel, did that correspond to the information that

19 Sergeant Detzel provided you from his informant?

20 A. Yes, sir.

21 Q. Did it appear as if anyone was home when you first went

22 and surveilled the property?

23 A. We couldn't tell.

24 Q. You didn't go on the property at that point in time?

25 A. No, sir, we did not.

1 Q. Subsequent to actually going to the property on Hill

2 Road, what happened after you did that the first time?

3 A. Sergeant Detzel left the scene. We made arrangements

4 that, we informed him that we were going to surveil the

5 property. We made arrangements to contact him and another

6 officer by cell phone if we were going to attempt an

7 apprehension.

8 Q. You stayed there at Hill Road surveilling the property

9 and Sergeant Detzel left?

10 A. Yes, sir.

11 Q. And did there come a point in time when you then

12 recontacted Sergeant Detzel?

13 A. Yes, sir.

14 Q. Why did you do that?

15 A. We saw three pickup trucks come up together up the road

16 and pull into the driveway of a garage adjacent to the

17 residence where we were surveilling.

18 Q. And, approximately, what time was that?

19 A. I would say that would be approximately 8, 8:30.

20 Q. Other than yourself, was it just you and Agent Jerry

21 Verga that were doing this surveillance at that time?

22 A. And Trooper Reinhart was there, also.

23 Q. So approximately 8, 8:30, you see these three cars pull

24 into the property that you were surveilling; do you then

25 contact Sergeant Detzel?

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1 A. Yes, sir.

2 Q. Then what happens?

3 A. We contacted him, met with him and another officer.

4 Because of the physical layout, there were two buildings there

5 and because we had seen three pickup trucks come, I felt that

6 we did not have enough officer presence there to safely effect

7 an apprehension. At that point I contacted the Meadville

8 barracks of the Pennsylvania State Police and asked them for

9 additional officers.

10 Q. And am I correct that prior to this point in time, there

11 was no discussion between yourself and any other law

12 enforcement officer to go obtain a search warrant, correct?

13 A. No, sir.

14 Q. Do you ultimately obtain the assistance of other law

15 enforcement agencies?

16 A. Yes, sir.

17 Q. When did that happen?

18 A. Shortly after we met with Officer Detzel, then we went to

19 Grotto Park, which is between Meadville and the residence, and

20 we met with Corporal Rossman and another Pennsylvania state

21 trooper, that was all the man power he had available at the

22 time.

23 Q. And the purpose of the state police being there was just

24 additional police presence?

25 A. Yes, sir.

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1 Q. After the meeting in Grotto Park -- first, before we talk

2 about what happens after, do you discuss kind of a plan of

3 operation in that meeting in Grotto Park?

4 A. I informed them of the physical layout, showed them a

5 picture of Mr. Foley. Talked to the corporal about our

6 authority as parole officers to effect the arrest. As I

7 stated, we briefly discussed the physical layout. We made

8 arrangements to go up to an area near the house where we could

9 begin to look it over and come up with a final plan as to who

10 was going to do what.

11 Q. And did you then go to that area where you had a vantage

12 point?

13 A. Yes, we met him where we could all see the house, we fine

14 tuned our plan.

15 Q. How long were you in that area before your actual entry

16 on to this property?

17 A. No more than 10 minutes.

18 Q. Approximately what time did you then actually enter the

19 property at Hill Road there?

20 A. Between 10 and 10:30.

21 Q. And explain what happens then when you enter onto the

22 property?

23 A. We made arrangements for officers to cover the vehicles.

24 We had two K-9 officers there, we had discussed who was going

25 to cover the back. He put a K-9 towards the back, we put a K-9

1 up at the vehicles. The garage that was adjacent to the place,

2 then we covered the house. Myself and I believe Agent Verga

3 and Trooper Reinhart went to the front door of the residence.

4 Q. Would Sergeant Detzel have been one of the officers that

5 was there that covered the vehicles?

6 A. Yes, sir.

7 Q. Is it fair to say that there's a pretty fair distance

8 between the outbuilding or garage and the residence?

9 A. Yes, sir.

10 Q. Is the distance, in your opinion, sufficient so that if

11 someone in the dark of night was standing by the garage, they

12 would not be able to know what was happening at the residence?

13 A. I would say that would be correct.

14 Q. So how many officers in total went onto the property?

15 THE COURT: And describe by what organization

16 they're affiliated with, also?

17 BY MR. TRABOLD:

18 Q. Give me the total, then we'll break it down from there?

19 A. There was myself and Agent Verga with the State Board of

20 Probation and Parole. There was Trooper Reinhart from the

21 state police fugitive apprehension unit, who had gone down with

22 us. There was Sergeant Detzel and another K-9 officer from a

23 municipal department in this area, I can't remember his name.

24 And there were two state troopers.

25 Q. So seven total?

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1 A. Yes, sir.

2 Q. And one of those additional state troopers would have

3 been Corporal Rossman?

4 A. Yes, sir, that's correct.

5 Q. So you go onto the property, people take up their

6 locations, and yourself, Agent Verga and Trooper Reinhart

7 approach the residence?

8 A. That's correct.

9 Q. Is there a particular reason why the garage wasn't

10 approached first as opposed to the residence?

11 A. Well, there were lights on in the residence, we couldn't

12 tell if there were any lights on in the garage. If I remember,

13 there were no windows in the front of the garage, just seemed

14 more natural to approach the residence.

15 Q. Okay. What happens when you approach the residence?

16 A. I knocked at the door, at first nobody responded. And

17 then I knocked and I announced "state parole".

18 Q. Did somebody answer the door then?

19 A. Well, I had knocked and announced several times. And

20 then the door was subsequently answered by -- by a woman.

21 Q. Do you recall that individual's identity?

22 A. I can't remember offhand, it just slipped my mind.

23 Q. Could it possibly be Christina Weber?

24 A. It was Christina Weber.

25 Q. So the record is clear, did you know her prior to going

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1 onto the property that night?

2 A. I did not.

3 Q. She answers the door after you knocked several times,

4 what happens?

5 A. I informed her who I was, informed her that I had a

6 warrant for the arrest of Maurice Foley and I asked her if Mr.

7 Foley was there.

8 Q. What did she say?

9 A. She said he was not.

10 Q. What happened after that?

11 A. I asked her if she knew where Mr. Foley was. She stated

12 that she did not. I asked who else was in the residence, she
13 said my girlfriend is here. I asked her who the three vehicles
14 were who had just driven up, that we had, during the course of
15 surveillance, had seen drive up. She was real evasive about
16 that.

17 Q. How was she evasive?

18 A. She said she didn't know.

19 Q. She didn't have an answer as to why there were three cars
20 on the property?

21 A. She had no answer.

22 Q. What happened after that?

23 A. I asked who else was in the residence, she stated her
24 girlfriend. I asked her if she would have her girlfriend come
25 to the door.

1 Q. Did the girlfriend in fact come to the door?

2 A. She did.

3 Q. Was she identified or did she provide her name?

4 A. Agent Verga was familiar with her and she also identified
5 herself.

6 Q. And how did she identify herself?

7 A. I believe her name is Angie Carbone.

8 Q. What happened then when Ms. Carbone came to the door?

9 A. I asked Ms. Carbone to step out of the residence and I

10 spoke with her.

11 Q. Why did you ask her to step out of the residence?

12 A. I wanted to talk to her separately from Ms. Weber.

13 Q. Before we go further with that, when you knocked and

14 announced at the door, did you have your gun drawn?

15 A. I did not.

16 Q. Did either Agent Verga or Trooper Reinhart have his gun

17 drawn?

18 A. I'm not sure.

19 Q. And did Angie Carbone comes out of the residence?

20 A. Correct.

21 Q. What happens?

22 A. I asked her, I informed her who I was, I informed her

23 that I had a warrant for Maurice Foley. I informed her of the

24 possible consequences of hindering apprehension. I asked her

25 if Mr. Foley was in the residence.

1 Q. Did you place her under arrest?

2 A. I did not.

3 Q. Did you place handcuffs on her?

4 A. I did not.

5 Q. Did you tell her she was going to be arrested?

6 A. I did not.

7 Q. Did you do any of those things to Christina Weber at that

8 point in time?

9 A. I informed them that I had a warrant for arrest and I

10 informed them of the possible penalties, and the possibility

11 they could be arrested for hindering apprehension.

12 Q. What does Ms. Carbone then tell you?

13 A. She says she didn't know about Mr. Foley, but her

14 boyfriend was in the garage.

15 Q. Did she identify her boyfriend by name?

16 A. She did, but I can't remember who he was.

17 Q. She says my boyfriend such and so, Butler, is in the

18 garage?

19 A. Yes, sir.

20 Q. What then happens?

- 21 A. We informed all the officers, some of the officers stayed
22 down by the residence and I went up to the garage and knocked
23 on the man door of the garage and announced "state parole, open
24 the door."
25 Q. Who stayed up by the residence, if you recall?

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- 1 A. I can't remember.
2 Q. So you went from the residence to the garage by yourself?
3 A. Yes, sir.
4 Q. You knocked at the door of the garage and what happens?
5 A. Nobody answered. I did that several times, knocking
6 loudly and announcing "state parole, open the door." There was
7 one of the pickup trucks that we had seen arrive during our
8 surveillance was, I believe it was a black Chevrolet with dual
9 wheels on the back. That was parked right there by the door,
10 the lights came on and the vehicle started remotely.
11 Q. And when the vehicle starts remotely, the door where
12 you're at to the garage, the man door is still closed?
13 A. Yes, sir, nobody responded to --
14 Q. Then what happens?

15 A. At that point the door opened and I confront a man there

16 who we immediately put down on the ground and handcuffed.

17 Q. Why did you do that?

18 A. Why did we handcuff him?

19 Q. Yes.

20 A. For officer safety.

21 Q. Did you know who he was?

22 A. I did not.

23 Q. What happens after you put this individual who opens the

24 door down -- first of all, did the individual open the door and

25 come out of the garage or remain inside the garage?

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1 A. He opened the door and we immediately -- we were put on a

2 higher state of alert when that car started. Obviously, there

3 was something going on. So as soon as he answered the door, we

4 took him into custody, put him on the ground and handcuffed

5 him.

6 Q. Is he on the ground outside the garage or inside the

7 garage?

8 A. I believe we put him on the ground right inside the

9 garage.

10 Q. And then what happens?

11 A. At that point we had weapons drawn, we had weapons drawn

12 when the truck started. I made entry into the garage, and at

13 the back of the garage there's a ladder going up to the second

14 floor and I could see feet coming down the ladder.

15 Q. And then what did you do?

16 A. I immediately went to the end of the garage, covered that

17 individual at gun point and ordered him down.

18 Q. And did you take note of any activity prior to your entry

19 into the garage that may have been happening outside --

20 A. Yes --

21 THE COURT: Wait until he finishes, slow down a

22 little bit.

23 BY MR. TRABOLD:

24 Q. Let me say that again so the record is clear. Prior to

25 your entry into the garage, did you take note of any activity

1 that appeared be occurring outside behind the garage?

2 A. I couldn't see behind the garage because I was in front

3 of it.

4 Q. Did you see or hear anything?

5 A. Yes, sir, as I was making my entry into the garage, I

6 could hear shouting coming from the back of the garage outside.

7 Q. Other than knowing that it was shouting, do you recall

8 the specifics of what was being said?

9 A. I think I heard words to the effect "get down, get down."

10 Q. And at that point in time, you didn't have any idea who

11 was being ordered down in the back, in the rear area of the

12 garage?

13 A. No, sir, I did not.

14 MR. SCHROEDER: I object to the leading nature of

15 the questions.

16 THE COURT: Well, overruled. But try not to lead.

17 BY MR. TRABOLD:

18 Q. Where were you exactly inside the garage when you heard

19 this commotion in the back?

20 A. At the time we put the first individual down, when I went

21 back and saw the feet, it was pretty quick. So it would have

22 been -- I'm talking a short time span here.

23 Q. Describe the circumstances of this individual coming down

24 from the ladder?

25 A. There was a ladder going up in the far back of the

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1 garage, going up through a trap door to the second floor. I
2 could see the feet. At that point I immediately went to the
3 rear of the garage. Like I said, I heard some shouting, "get
4 down, get down," so I knew something was going on behind the
5 garage. So I ordered that individual down at gun point. We
6 had thrown him down on the floor and cuffed him.

7 Q. And while you're doing this with regard to the first
8 individual and the second individual, are you the only one
9 inside the barn?

10 A. No, sir.

11 Q. Who else is in there?

12 A. I believe Trooper Reinhart went in and Corporal Rossman.

13 Q. So you now have an individual near the front door of the
14 garage who's on the ground in custody, and you place an
15 individual at the back of the garage who was coming down the
16 ladder, you placed that person as well in handcuffs?

17 A. Yes, sir.

18 Q. What then happens?

19 A. Right before or right when I was taking the second
20 individual into custody, Agent Verga came into the garage. I
21 believe that he assisted me in handcuffing the second
22 individual. At that point he informed me that they apprehended
23 Mr. Foley attempting to escape out of the rear of the garage.
24 Q. Prior to Agent Verga informing you that Mr. Foley had
25 been apprehended in the rear outside, did you know where Mr.

77

1 Foley was?
2 A. No, sir.
3 Q. Did you have any information to conclude that that was
4 Mr. Foley who was out in the back causing the commotion?
5 A. No, sir.
6 Q. After Agent Verga informs you that Mr. Foley is
7 apprehended outside in the rear, what happens?
8 A. Because of the totality of the circumstances, obviously,
9 there are people in the house, who were being less than honest
10 with us when we knocked and announced, with the truck starting,
11 the amount of people that we had observed, we had surveilled
12 three vehicles come up and still had no idea how many people

13 were in that residence, in that garage at that time, I wanted
14 to, for officer safety, to clear the garage to really make sure
15 there were no other people there.

16 Q. Did you in fact do that?

17 A. I did.

18 Q. Did you go upstairs via the ladder?

19 A. I did.

20 Q. With your gun drawn?

21 A. Yes, sir.

22 Q. What happens when you get up into the second story of the
23 garage?

24 A. As I cleared the second story of the garage, I noticed a
25 12-gauge shotgun laying there. I checked that, it was loaded.

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1 As I went back, headed towards the front of the garage, the
2 upstairs, I noticed a long container full of marijuana seeds.

3 Q. Just so we're clear for purposes of the record, as you're
4 clearing that upstairs for officer safety, are you looking in
5 drawers?

6 A. No, sir.

7 Q. Can you characterize the facts in which you found this

8 contraband, how was it laying there?

9 A. There was furniture upstairs, there was all types of

10 obstacles upstairs, as I looked around, they were just laying

11 right out.

12 Q. Did you have to uncover anything?

13 A. I did not, this was in plain view.

14 Q. And the upstairs, was it just one big room or was it a

15 series of smaller rooms?

16 A. To be honest, I can't remember.

17 Q. Let me put it to you a different way. Were there areas

18 upstairs where an individual could have been hiding that you

19 would not have immediately seen?

20 A. Yes, sir, there were numerous areas.

21 Q. Can you describe those?

22 A. Like I say, there was furniture up there, I had to look

23 behind. I believe there was a couch up there. Right at the

24 top of the ladder there was a place for a wall had been built,

25 and the roof came down, we had to look under.

1 Q. Did you go upstairs by yourself to conduct the search for
2 officer safety?

3 A. I did not.

4 Q. Who else was with you?

5 A. I believe it was Trooper Reinhart, I don't know if Agent
6 Verga came up or not, I had to have somebody cover me.

7 Q. When you went up the stairs, you already said you knew
8 there were three individuals that were apprehended; did you
9 know -- did you have any way of knowing whether anyone else was
10 upstairs, other than to go up there and see?

11 A. I did not. I knew that I had seen three vehicles pull
12 in, I did not observe how many people were in each vehicle.

13 Q. So how long a period of time did it take you to clear the
14 upstairs?

15 A. Matter of minutes.

16 Q. Did you then come down the ladder?

17 A. I did.

18 Q. What happens when you he get down back to the first story
19 of the garage?

20 A. We continued to just clear the garage, to make sure
21 nobody else is hiding in the garage. Right as I faced the rear

22 of the garage by the ladder there was a workbench, right over

23 on the right, I noticed a large triple beam scale on that

24 workbench.

25 Q. Did you notice any other items of contraband that were

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1 out in the open?

2 A. I did. When I went back over in that area, I noticed a

3 large amount of green leafy vegetable material on the

4 workbench, I believed that to be marijuana. I also noted there

5 was a large amount of large ziploc plastics bags. When I had

6 come down the ladder, I also noticed that there was a disc with

7 white powder and a straw right by the ladder. I noticed that

8 that there was a money wrapper, I believe it was, it indicated

9 a thousand dollars money wrapper that was torn over. And when

10 we were taking the individuals out to the garage, I noticed

11 that there was a plastic bag with marijuana in it laying by the

12 man door.

13 THE COURT: Keep your voice up, sir.

14 BY MR. TRABOLD:

15 Q. You said you noticed a plastic bag laying by the man

16 door, in close proximity to the man door?

17 A. Within a foot.

18 Q. Would you characterize the amount of suspected marijuana

19 as a large amount or a small amount?

20 A. Probably, I'd say a quarter ounce, a small amount.

21 Q. Now, all of these items of contraband that you noticed,

22 did you have to pick anything up that was on the top of them or

23 uncover them in any fashion?

24 A. We did not.

25 Q. Did you undertake a search for contraband in that garage

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1 at that point in time?

2 A. The only search we did was for officer safety.

3 Q. By officer safety, you mean to see if there was anybody

4 else there?

5 A. We were looking for people.

6 Q. What goes through your mind when you see firearms as

7 you're conducting your protective sweep?

8 A. Again, I mean, it was already dark, we had a large area,

9 we had a limited number of officers, the truck had started, I

10 saw a loaded firearm, what I believe to be drug paraphernalia,

11 we were even more concerned for officer safety at that point.

12 It was dark, we couldn't see around the building or anything.

13 Q. Was there lights on inside the garage?

14 A. Yes, sir.

15 Q. Downstairs as well as upstairs?

16 A. Yes, sir.

17 Q. So ultimately you got these three individuals in custody,

18 you made sure no one else is in the garage, what do you then

19 do?

20 A. We cleared the garage. I then informed the officers

21 there of what I had observed, the state police officers there.

22 And then I informed Corporal Rossman, I believe, that I wanted

23 to go back down to the residence, speak with Ms. Weber, I

24 wanted to get consent from her to walk through the residence to

25 make sure there were no other people in the residence.

1 Q. Did that in fact occur?

2 A. Yes, sir.

3 Q. Explain the circumstances to the court of what happens

4 when you go back up to the residence?

5 A. I went back down to the residence, knocked at the door,

6 Ms. Weber answered the door. I informed her that we had found

7 Mr. Foley in the garage. I told her that I wanted to walk

8 through the house to make sure there were no other people

9 there. I informed her that we were not going to go in any

10 drawers or perform any search other than a search for persons.

11 Q. And did you place her in custody or arrest her or did you

12 have your gun drawn or anything like that?

13 A. I had my gun drawn, but I did not have it drawn on her.

14 Q. You had your gun out?

15 A. I had my gun out.

16 Q. You were not pointing it at her?

17 A. I did not.

18 Q. Was she in handcuffs?

19 A. No, sir.

20 Q. Did you tell her you were going to place her under arrest

21 if she did not allow you in the house?

22 A. I just asked her for consent. I was quite specific,

23 again, we weren't going to search drawers or anything, we were

24 just searching for people. As a matter of fact, she walked

25 through with me.

1 Q. She consented and allowed you to enter the residence?

2 A. Yes, sir, she did.

3 Q. Did she sign a written form in that regard?

4 A. She did not.

5 Q. Is it your practice to carry those forms around?

6 A. We do not.

7 Q. So you enter into the residence and she walks through the
8 residence with you?

9 A. Yeah, she was behind me, she showed me where Mr. Foley's
10 room was, I had her stay behind me as I went into the room.

11 Q. Explain what happens as you go into the residence, you
12 step foot into the residence, what happens, where do you go?

13 A. Well, I cleared the area to make sure there was nobody
14 there when I first entered. As it was cleared, she took me to
15 Mr. Foley's room.

16 THE COURT: Who is with you, police officer wise, as
17 you enter the residence?

18 THE WITNESS: There was one of the other municipal
19 officers with me and I believe Agent Verga also went into the

20 residence.

21 THE COURT: And when you returned to the residence
22 from the garage after you secured that area, were there any
23 police officers that had been left at the residence or outside
24 the residence while the events were occurring at the garage?

25 THE WITNESS: Yes, sir, I believe that there were

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1 still officers who stayed behind at the residence to cover the
2 rear of the residence.

3 THE COURT: And finally Mr. Trabold asked you a
4 question whether you told Ms. Weber that she would be arrested
5 if she did not consent, I wasn't sure what your response was?

6 THE WITNESS: No. In fact, I told her that she
7 didn't have to let us into the residence. We did not tell her
8 that she would be arrested if she did not consent.

9 BY MR. TRABOLD:

10 Q. Just so the record is clear, not only did you not tell
11 her that she would be arrested, you told her she didn't have to
12 consent to the search?

13 A. That's correct.

14 Q. And did she, prior to letting you in the house, did she
15 hesitate at all or did she say anything like, geez, I don't
16 know, maybe I should talk to somebody or anything like that?

17 A. No, at that point she knew that we had Mr. Foley in
18 custody, she was totally cooperative at that point.

19 Q. So she let's you into the residence, you then begin to
20 walk through?

21 A. Correct.

22 Q. Ms. Weber then identifies the room in the house as Mr.
23 Foley's bedroom?

24 A. That's correct.

25 Q. What did you find, if anything, in there?

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1 A. I saw laying on the bed a shotgun that had a pistol
2 grip -- short, compact type shotgun, I picked that up, it was
3 loaded. I saw an army type tool kit bag that had a large
4 amount of ammunition in it. I saw laying on top of that
5 ammunition bag what I believe to be a magazine for an AK-47
6 assault rifle, which was fully loaded. I believe there was an
7 open type closet or a china closet there, and I saw two bongs,

8 which I believe are commonly used for smoking marijuana.

9 Q. Did you ultimately discover anyone else inside the house,

10 other than Ms. Weber or Ms. Carbone?

11 A. No, sir.

12 Q. How long a period of time were you in the house?

13 A. Less than 10 minutes.

14 Q. Did Ms. Weber make any statements to you with regard to

15 the possible presence of narcotics or other contraband in the

16 house?

17 A. I asked her whose shotgun that was, she informed me it

18 was Mr. Foley's.

19 Q. Did she say anything to you about the presence of

20 additional marijuana in the house?

21 A. I didn't discuss drugs with Ms. Weber.

22 Q. You're in there about 10 minutes, you then leave the

23 residence, what happens after you leave the residence?

24 A. We had, I had -- informed Ms. Weber that we had taken Mr.

25 Foley into custody. And I informed her that that shotgun, I

1 believe was a violation of parole, it was a violation of the

2 law. I asked her if the officer could stay in the residence

3 with her because we were going to secure the area and contact

4 other authorities.

5 Q. And did she allow that to occur?

6 A. She did.

7 Q. While you were going through the house, was Ms. Carbone

8 in the residence at the time or was she somewhere else?

9 A. I believe that we had her go outside the residence.

10 Q. Now, you then --

11 A. I can't remember, she didn't talk with me.

12 Q. She may have been in the house or out of the house,

13 you're just not sure?

14 A. That's correct.

15 Q. Now, what happens after Ms. Weber agrees that an officer

16 could stay inside the house to secure the residence?

17 A. We contacted, I believe, it was Trooper Basinger of the

18 Pennsylvania State Police, it was narcotics investigations, and

19 we secured the garage area and the house area until his

20 arrival.

21 Q. How were they secured?

22 A. I believe we had an officer in the residence with Ms.

23 Weber. I believe we had an officer remain in the barn, and

24 officers were stationed in various positions around the

25 residence.

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1 Q. And where were the three people that were apprehended and

2 handcuffed, where were they?

3 A. I believe they were placed in a patrol car. Two of them

4 were subsequently released, I can't remember when they were

5 released.

6 Q. Did you undertake any questioning of those people?

7 A. I did not.

8 Q. Did you question Mr. Foley?

9 A. I did not.

10 Q. Trooper Basinger gets there from the state police, do you

11 then provide him information that you learned while you were on

12 the property?

13 A. Yes, sir.

14 Q. And is that the extent of your involvement in the case?

15 A. I also contacted the Bureau of Alcohol, Tobacco and

16 Firearms, because I had seen the weapons there and Ms. Weber

17 had said one was Mr. Foley's.

18 Q. You had contacted the appropriate authorities, you
19 provided them the information you have, is that the extent of
20 your involvement?

21 A. They asked, we still had limited manpower, they asked
22 that we remain on the scene and keep the scene secure until
23 they could return with a search warrant.

24 Q. Did they in fact do that?

25 A. Yes, sir.

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1 Q. You weren't involved in the actual taking of the search
2 warrant application to the district justice?

3 A. No, sir.

4 Q. Did you take part in the execution of the search warrant?

5 A. Yes, a limited amount.

6 Q. And then that's the extent of your involvement?

7 A. Yes, sir.

8 MR. TRABOLD: One moment, your Honor.

9 THE COURT: Okay.

10 MR. TRABOLD: Nothing further.

11 THE COURT: All right, you may cross.

12 CROSS-EXAMINATION

13 BY MR. SCHROEDER:

14 Q. Agent Wehrle, I believe your testimony on direct
15 examination would have established, in terms of the number of
16 people who were present on April 17th at the time of this
17 search, if I'm understanding your testimony correctly, there
18 was seven officers or agents, correct?

19 A. Yes, sir, to the best of my recollection.

20 Q. And there were four civilians, correct, the defendant,
21 Maurice Foley -- I'm sorry, five civilians; the defendant,
22 Maurice Foley, Christina Weber, Angela Carbone, Eric Dunn and
23 Paul Butler were the five civilians?

24 A. Yes, sir.

25 Q. You were there the entire time period, no one else was

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1 ever located on the premises?

2 A. Yes, sir, that's correct.

3 Q. You have testified on direct examination that there were
4 seven officers?

5 A. Correct.

6 Q. Now, we have entered an exhibit in this case or

7 introduced an exhibit that I'll refer to as Defendant's

8 Exhibit A. I'm going to show you this, sir, and ask you

9 whether this fairly and accurately depicts, as you recall, the

10 configuration of the house, the road, the driveway, and the

11 garage or barn?

12 A. Yes, sir.

13 Q. Now, with respect to this document, sir, I believe your

14 testimony was that earlier in the day you had received some

15 contact from Sergeant Detzel, correct?

16 A. Yes, sir.

17 Q. Was that the first that you had spoken with Sergeant

18 Detzel about this situation?

19 A. Yes, sir.

20 Q. Now, if Sergeant Detzel would have testified that he had

21 information about a week or so before this date regarding the

22 parole absconder, the alleged parole absconder, Maurice Foley,

23 being at this location, plus some other reliable information

24 about drug activity, you wouldn't have any reason to disagree

25 with that, would you; that he had obtained this information

1 about a week before the 17th of April, you wouldn't have any

2 reason to disagree with that, would you?

3 A. No, I don't know when he obtained the information.

4 Q. But as far as your involvement in this matter is

5 concerned, the first you get any information is the 17th of

6 April?

7 A. Yes, sir, that's correct.

8 Q. Earlier in the day I believe you testified to?

9 A. That's correct.

10 Q. What time?

11 A. It would have been in the afternoon.

12 Q. And Sergeant Detzel testified that there's always a

13 magistrate, a district justice on duty in any county,

14 specifically Crawford County, with respect to going any time of

15 the day or night for purposes of a search warrant, would you

16 agree with that?

17 A. I would agree with that.

18 Q. And you testified on direct examination that after you

19 received this information, that there was some sort of a

20 meeting which takes place?

21 A. Yes, sir, we met with Sergeant Detzel.

22 Q. Was this what the prosecutor kept referring to as the

23 Grotto Park meeting?

24 A. No, sir.

25 Q. So there were two meetings?

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1 A. The first meeting we met with Sergeant Detzel, so he

2 could show us where the residence was. The second meeting, it

3 was another meeting, is when we saw the vehicles come. The

4 meeting at Grotto Park is the meeting that we had where I

5 determined that we did not have enough officers to safely

6 attempt to effectuate an arrest.

7 Q. What time did the first meeting with Sergeant Detzel take

8 place?

9 A. I would say roughly 5 o'clock.

10 Q. Where?

11 A. It took place at the Saegertown exit of I-79.

12 Q. You drove your vehicles and met him there?

13 A. Yes, sir.

14 Q. And how many state parole agents were present for that

15 meeting?

16 A. Two.

17 Q. Yourself and Officer Verga?

18 A. Yes, sir.

19 Q. And Sergeant Detzel?

20 A. Yes, sir.

21 Q. He at that time communicates to you information regarding

22 Maurice Foley, as well as information about possible drug

23 activity?

24 A. He stated -- the main gist of the information was that

25 Mr. Foley was there. And Mr. Foley was a fugitive. He warned

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1 us that his informant had also said that there was possibly

2 some methamphetamine activity there.

3 Q. There was drug information communicated at that time?

4 A. This was more of a safety thing because of the

5 methamphetamine issue.

6 Q. Then this takes place at 5 o'clock, what happens next

7 time wise?

8 A. Okay, then we -- this is approximately five, I might be a

9 little bit off on time. We drove out to Hill Road. He shows

10 us where the house was. Trooper Reinhart was with us at the 79

11 meeting also, he had driven down --

12 Q. We have a local police officer, a Pennsylvania state

13 trooper and two parole officers?

14 A. That's correct.

15 Q. The four of you then go in one vehicle?

16 A. No, sir, we go in two vehicles.

17 Q. Do you ride by or stop at the time?

18 A. There was a church down the road, we stopped there.

19 Q. And what time did this first stop occur there?

20 A. It would have been a half hour after our initial meeting.

21 Q. Sometime between 5 and 6 o'clock?

22 A. Yes, sir.

23 Q. Perhaps then?

24 A. At that time we informed Officer Detzel that we wanted to

25 surveil the location, we just didn't want to go up and knock on

1 the door, we could not tell if anybody was home or not. We

2 made arrangements, we got his cell phone number, we made

3 arrangements to call him in case we needed back up, and he said
4 that he could get an additional K-9 officer to also back us up.

5 Q. Did you then continue to remain at the location or did
6 you leave and then come back to surveil?

7 A. We went to a location and surveiled.

8 Q. We being yourself and Officer Verga?

9 A. And Trooper Reinhart who was in our vehicle.

10 Q. The three of you then and Officer Detzel?

11 A. Yes. During that period we also interviewed some of the
12 neighbors.

13 Q. Did you receive any information from any of the neighbors
14 regarding any unusual activities at the premises?

15 A. Nothing, you know, they just said there was a lot of
16 traffic in and out.

17 Q. And a lot of traffic in and out is, in your experience,
18 consistent with drug activity, correct?

19 A. It could be, may not be.

20 Q. It's not inconsistent with drug activity?

21 A. Pardon me.

22 Q. It's not inconsistent with drug activity?

23 A. It's not inconsistent.

24 Q. What other information did you --

25 THE COURT: Keep your voice up, please.

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1 THE WITNESS: Yes, your Honor.

2 BY MR. SCHROEDER:

3 Q. Do you recall any other specific information you
4 received?

5 A. Nothing specific.

6 Q. And at this time was at least one agent from the
7 Pennsylvania State Police present with you, when you're
8 interviewing neighbors?

9 A. He was there as a backup, he's from the fugitive
10 apprehension unit. He really didn't participate in the
11 interviews, I conducted the interviews.

12 Q. I would be correct in concluding that in view of the fact
13 that all of you are working together on this, you're sharing
14 information back and forth with respect to what neighbors are
15 saying, things of that nature, correct?

16 A. We were discussing the situation, correct.

17 Q. And what happens next time wise with respect to the

18 ultimate arrival at this property?

19 A. The next thing we saw, I would say would be approximately
20 between 8 and 8:30, we saw three vehicles drive together up the
21 road and pull in and park by the garage.

22 Q. Were you in marked vehicles at the time?

23 A. We were not. We only had one vehicle, it was just my
24 vehicle.

25 Q. That's an unmarked vehicle?

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1 A. Yes, sir.

2 Q. Did you see individuals exit those vehicles?

3 A. We did not.

4 Q. What happened then after you see these three vehicles
5 pull into the driveway?

6 A. We contacted Officer Detzel, we informed him that three
7 vehicles had arrived. We informed him that we were going to
8 attempt to see if Mr. Foley was there. And I informed him that
9 we did not have enough officers to safely do that.

10 Q. Now, if my computation of the time is correct, if you
11 arrive there at or around 5:30, you said that the three

12 vehicles arrive at 8 or 8:30, and you remain in that location

13 that entire time period, we're talking about an approximate

14 three-hour period that yourself, Mr. Verga and at least one

15 state police officer remained at the scene?

16 A. Yes, sir.

17 Q. Continuing to develop evidence with respect to the

18 defendant and the activity taking place there?

19 A. We were surveilling the residence to see if we could see

20 Mr. Foley. And, like I say, we could not tell if anybody was

21 home.

22 Q. Well, you also indicated you were interviewing neighbors?

23 A. We talked to neighbors, right.

24 Q. Now, at or about 8:30, you contact Sergeant Detzel again

25 and you indicate you need more personnel?

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1 A. We told him of the arrival of three vehicles. He said,

2 he had previously informed me that there was another K-9

3 officer available, another municipal officer. I informed him

4 that I did not think that was enough to safely do what we had

5 to do.

6 Q. So did you leave that area then?

7 A. We did.

8 Q. Is that when the Grotto park meeting takes place?

9 A. Yes, we contacted Corporal Rossman at the Meadville

10 barracks of the Pennsylvania State Police, informed him of the

11 situation and requested additional backup.

12 Q. Where is this Grotto Park located?

13 A. Between Meadville and the residence.

14 Q. So all of the ultimate officers and agents that are

15 involved in this arrest of Mr. Foley, meet at Grotto Park and

16 then go on the location itself?

17 A. Yes, sir.

18 Q. And all of the information that exists is exchanged and

19 discussed at Grotto Park?

20 A. Information was exchanged and discuss, we showed them a

21 picture of Mr. Foley. We informed them we had seen three

22 vehicles drive up. That's why we wanted the additional backup.

23 At that point we had a discussion, I still did not feel that we

24 had enough officers to safety to do what we had to do there,

25 but there was nobody else available, Corporal Rossman was the

1 supervisor. I drew some pictures of the layout, and we had a
2 discussion of who was going to go the front door, who was going
3 to go to the back door, who was going to cover the cars. We
4 agreed to meet at a location where we could observe the
5 residence and finalize our plans.

6 Q. Did you exchange any information about drug activities?

7 A. We did not. I believe Officer Detzel again mentioned
8 that his informant said something about methamphetamines.

9 Q. So, as far as you recall, the Grotto Park meeting and
10 everything that had taken place, the only focus is the
11 apprehension of Maurice Foley, you're not even talking about
12 other things?

13 A. I believe, again, Officer Detzel stated about the
14 methamphetamine because of the danger associated with that.
15 The fact that there is the possibility of drug activity, this
16 was, of course, discussed because again that's an officer
17 safety issue.

18 Q. But, as far as you're concerned, you would agree with me
19 that you and Officer Verga are the lead guys because this is a
20 parole situation?

21 A. That's correct.

22 Q. As far as you're concerned, the sole thrust of this is to

23 arrest Maurice Foley?

24 A. That's correct.

25 Q. Now, after the meeting in Grotto Park, you then go to the

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1 location, you go directly from Grotto Park to the Hill Road

2 property location?

3 A. We went to an area where we can observe the property,

4 where the other officers who were not familiar with the

5 property could see seen the layout and we finalized our plan.

6 Q. The layout you drew, you did this just based on your

7 prior observations?

8 A. Yes, sir.

9 Q. Did you go onto the property at all?

10 A. I did not.

11 Q. So this is just what you were able to observe?

12 A. Just what I was able to observe.

13 Q. This is April 17th, correct?

14 A. Correct.

15 Q. When you first arrived, it's sometime after 6 o'clock,

16 would it have been dark or light at that time?

17 A. There was still some light.

18 Q. Dusk?

19 A. To be honest, I can't remember.

20 Q. But it's getting progressively darker?

21 A. The vapor light up over the garage, I remember that came

22 on at some point.

23 Q. The whole group comes back, seven officers come back at

24 or about 10 o'clock, 10:30?

25 A. Correct.

99

1 Q. For the sole purpose, as you've just described, of

2 apprehending Maurice Foley?

3 A. Right.

4 Q. As far as you're concerned, you're the lead guy?

5 A. Correct.

6 Q. And the officers position themselves at various locations

7 for what you described as being officer safety, correct?

8 A. Correct.

9 Q. Now, with respect to the diagram in front of you, sir,

10 Defendant's Exhibit A, are you able to indicate on that diagram

11 with a circle, the location of the various officers -- well,

12 let me back up first. You indicated that you first go to the

13 door of the house, correct?

14 A. Yes, sir.

15 Q. Who's with you when you go to the door of the house?

16 A. Agent Verga and Trooper Reinhart were with me.

17 Q. Had everyone else been strategically positioned when you

18 went to the door of the house?

19 A. Yes, sir.

20 Q. So everybody, based upon your prior observations, your

21 diagrams and your plan, everybody was where they were supposed

22 to be?

23 A. As far as I knew.

24 Q. Can you put a circle in all of the locations where the

25 people were supposed to be; I would note for purposes of the

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1 record, the prior witness, if I could see that one minute, had

2 identified the location here where Sergeant Detzel with a dog

3 and another officer; is that consistent with what you recall of

4 their locations?

5 A. Sergeant Detzel was to cover the vehicles, which were

6 right up here. And I believe there was a big light on right

7 here, they stepped out into the shadows.

8 Q. Could you, with a circle large enough to write the name

9 of every individual inside the circle; put the locations as you

10 recall where you strategically placed them at the moment you

11 went to the door of the house?

12 A. I believe the agents -- when we went to the door of the

13 house?

14 Q. When you went to the door of the house, you testified

15 previously you had strategically placed everyone, correct?

16 A. Correct.

17 Q. Where were they?

18 A. Sergeant Detzel was up here by the vehicles. Agent Verga

19 and I believe Trooper Reinhart and myself went to the front

20 door. I believe the other K-9 officer and one the other state

21 trooper was to cover the back.

22 Q. Could you then put three circles --

23 THE COURT: You know what would be helpful to me is

24 if you used the overhead projector so I could see what's going

25 on, can you do that. Mr. Schroeder, if you can put it on the

101

1 screen over there, then it will come up on everybody's screen.

2 BY MR. SCHROEDER:

3 Q. Are you able to see this at your location, sir?

4 A. Yes, sir.

5 THE COURT: You can mark this up in any way, you can

6 do it with your finger just by pushing on the screen. Go

7 ahead.

8 BY MR. SCHROEDER:

9 Q. If you would do that, sir, we've already identified the

10 approximate position of Sergeant Detzel and at least one other

11 officer watching the vehicles as you've described, correct?

12 A. Correct.

13 Q. Do you agree with their position?

14 A. Yes, sir.

15 Q. Could you then mark a circle and put the initials of the

16 other strategically placed individuals?

17 A. Do you want me to mark --

18 THE COURT: Just mark the circle.

19 BY MR. SCHROEDER:

20 Q. Mark the circle.

21 A. (Witness complies). That would be myself, I believe

22 Agent Verga and Trooper Reinhart. I believe the other K-9

23 officer initially would have been in the back of the residence,

24 and possibly Corporal Rossman, I can't remember.

25 Q. There were at least two people behind the residence, is

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1 that correct?

2 A. Yes, sir.

3 Q. And then the two by the garage, initially?

4 A. Yes, sir.

5 Q. And you then indicate you knock on the door of the house?

6 A. Yes, sir.

7 Q. Did you speak first with Christina Weber?

8 A. Yes, sir.

9 Q. And your testimony is that you have some conversation

10 with her, was she cooperative initially or uncooperative?

11 A. She was cooperative in that she spoke to us, she was

12 uncooperative in that she would not give us information about

13 Mr. Foley, and she would not let us look in the residence.

14 Q. And that's cause for concern for you in your position,

15 correct?

16 A. Yes.

17 Q. And I would be correct in concluding that based on that,

18 just general safety principles, you keep her and Angela

19 Carbone, someone keeps them under surveillance the entire time

20 that this operation is taking place?

21 A. I don't know that.

22 Q. Pardon me?

23 A. You mean when we moved up to the garage?

24 Q. After your initial encounter with them, you receive

25 limited truthful information, according to what you just

103

1 indicated, from her?

2 A. Correct.

3 Q. That you would have in the interest of officer safety and

4 procedures, someone would have kept these two females under

5 observation and control the entire time?

6 A. They went back into the residence.

7 Q. You let them go back into the residence without an

8 officer present?

9 A. Ms. Weber would not let us in the residence.

10 Q. So she closed the door and just went into the residence?

11 A. Yes, sir.

12 THE COURT: Let me ask you a question here. When

13 you went to the house, this is the first time, before any of

14 the arrests were effectuated, right?

15 THE WITNESS: Yes, sir.

16 THE COURT: That's what we're talking about now?

17 THE WITNESS: Yes, sir.

18 THE COURT: Do I presume when you said she wouldn't

19 let us in, that initially the first time you went up there you

20 asked her for her consent to let you in and she said no?

21 THE WITNESS: I asked her if Mr. Foley was there, I

22 said can we come in and look for him, she said no.

23 THE COURT: All right, go ahead.

24 BY MR. SCHROEDER:

25 Q. She said no, he wasn't there, no, you cannot come in?

1 A. She said no, we could not look for him.

2 Q. Did she then close the door?

3 A. No. Then I asked who else was at the residence. She

4 said her girlfriend. Who we determined to be Ms. Carbone.

5 Then I asked Ms. Carbone to come out and speak with me.

6 Q. Where was Christina Weber at that time?

7 A. Standing in the doorway.

8 Q. And did Ms. Carbone come out when Ms. Weber was standing

9 there?

10 A. Yes, sir.

11 Q. And you spoke basically with the two of them in concert

12 together?

13 A. No, sir, I wanted to speak with Ms. Carbone separately.

14 Q. What information did you obtain from Ms. Carbone?

15 A. That her boyfriend was up in the garage.

16 Q. That would be Mr. Butler?

17 A. I believe so.

18 Q. Had you ever met any of these people before?

19 A. I had not.

20 Q. And what other information did you obtain from her?

21 A. That was all.

22 Q. So you obtained information that at least one person was

23 in the garage, correct?

24 A. Yes, sir.

25 Q. And that was the only information you would obtain at

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1 that time?

2 A. I had seen three vehicles arrive.

3 Q. That's correct. But in terms of the information that was

4 developed at the scene from individuals, you know that one

5 person was in the garage?

6 A. Yes, sir.

7 Q. Does anyone then stay, do any officers stay at the house

8 with the two females?

9 A. No, to the best of my recollection no officer went in the

10 house because we had not been granted access to the house. I

11 believe that an officer stayed down by the house while the rest

12 of us went up to the garage.

13 Q. Did you keep the females on the porch for officer safety?

14 A. (Witness shakes head.)

15 Q. You're shaking your head no?

16 A. We were spread out, okay, we had limited communications,

17 no, we we're just doing the best we could. It wasn't perfect,

18 it's the best we could.

19 Q. Well, officer safety is your primary concern, correct?

20 A. Yes, sir.

21 Q. And you would agree with me that you had gotten what you

22 deemed to be erroneous information from the individual, and

23 Christina Weber was actually -- she actually lived there,

24 correct?

25 A. I don't know that.

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1 Q. Did you ever develop that information?

2 A. Did I?

3 Q. Yes, sir.

4 A. I did not.

5 Q. You get what is at least somewhat untruthful or even

6 incomplete information from her and you are concerned for

7 officer safety, correct?

8 A. Correct.

9 Q. You don't recall whether they were kept under

10 surveillance --

11 A. I don't recall.

12 Q. Now, who else also goes to the garage, that you recall?

13 A. The focus shifted to the garage. I know that Agent Verga

14 went to the back. I know that Corporal Rossman was with me.

15 I'm not sure whether either Trooper Reinhart came up to the

16 garage with us or he stayed back at the house, I can't

17 remember.

18 Q. Could you place circles on the exhibit as to where the

19 individuals were when you went to the garage to knock and

20 announce?

21 A. I couldn't see the people behind the garage. It's kind

22 of hard for me to say where they were.

23 Q. But you do know there was somebody there?

24 A. Yeah.

25 Q. Because, in fact, somebody was arrested going out the

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1 back of the garage?

2 A. Where they were in the back of the garage, I don't know.

3 Q. Well, just generally, they were behind the garage?

4 A. They were behind the garage.

5 Q. So there are two people behind the garage?

6 A. At least two people.

7 Q. And we have the two officers previously positioned with
8 the dogs?

9 A. I believe one of the K-9s was in the back of the garage,
10 and Officer Detzel was still up by the vehicles.

11 Q. So we have probably four positioned already, how many do
12 you recall going to the front door -- you said you went to the
13 front door, knocked and announced, how many officers or agents
14 went to that door to do that?

15 A. I remember myself and Corporal Rossman.

16 Q. Where was Agent Verga?

17 A. He went to the back.

18 Q. He went to the back as well. So, as best as I can tell
19 from the finite number of officers in position, then everybody
20 would have gone --

21 A. I'm not too sure Trooper Reinhart stayed down there at
22 the residence or not.

23 Q. In any event, you testified you then knock and announce?

24 A. Correct.

25 Q. And what did you announce?

1 A. "State parole, open the door."

2 Q. And the witness previously testified in this case that

3 everything happened within a matter of seconds; do you agree

4 with that?

5 A. Matter of what?

6 Q. Seconds?

7 A. Seconds. No, sir, I had to knock and announce on several

8 occasions.

9 Q. How long did you wait to knock and announce?

10 A. At least 30 seconds.

11 Q. So you knocked and announced, you wait 30 seconds, you

12 knock and announce again, you're standing there and everybody

13 is positioned; what do you next recall happening?

14 A. I knocked and announced several times. The next thing

15 that happened was this truck started up in the driveway.

16 Q. Now, did you ever examine that truck to see what caused

17 it to start?

18 A. I did not.

19 Q. Did you look and see whether there were any individuals

20 in the truck?

21 A. We cleared it, there was nobody in the truck.

22 Q. So if you cleared it, there's obviously some sort of a

23 remote starting device, if this vehicle started, it had to be

24 done remotely?

25 A. That would be my guess.

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1 Q. Did you ever examine the truck to see if a remote

2 starting device was present?

3 A. I did not.

4 Q. Did you ever see anybody activate any kind of remote

5 starting device?

6 A. I did not.

7 Q. Did you ever see any remote starting device obtained from

8 any person or through any search of these premises?

9 A. I don't know.

10 Q. So the vehicle starts, do the lights go on?

11 A. The lights go on.

12 Q. This is in the middle of your knock and announce?

13 A. Yes, sir.

14 Q. What happens then?

15 A. Then Mr. Butler, I believe, opened the door.

16 Q. And the testimony was that he's immediately taken down

17 and secured?

18 A. He's immediately what?

19 Q. Taken down and secured?

20 A. Yes, sir.

21 Q. And you then enter the garage/barn structure, correct?

22 A. Correct.

23 Q. Do you see feet going up the ladder?

24 A. Yes.

25 Q. And this tells you that there's at least one other person

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1 present inside?

2 A. Yes.

3 Q. Now, would you agree with me that even before this,

4 there's a flurry of activity in the back and you can hear

5 indications that somebody is being taken down and secured in

6 the back?

7 A. The way I remember it is -- Mr. Butler, I'm ordering Mr.

8 Butler to the ground, get down. We have guns drawn, I'm

9 ordering him to get down, I can't hear anything while I'm

10 talking. Then I enter, okay. As I enter, I see the feet now

11 moving back towards the garage, I hear, you know, voices and

12 yelling coming from the back of the garage.

13 Q. And ultimately you came down that Maurice Foley was

14 apprehended in the back of the garage?

15 A. That's correct.

16 Q. So what you heard then is consistent with Maurice Foley

17 being apprehended at the back of the garage when you're inside,

18 after you've already taken down and secured Mr. Butler?

19 A. Correct.

20 Q. As far as you know, then, there is at least one other

21 person, you see feet going up the ladder, correct?

22 A. Yes, sir.

23 Q. This is a ladder, it's not steps?

24 A. Yes, sir.

25 Q. And you then follow-up -- do you then have that person

1 come down?

2 A. I ordered that person down.

3 THE COURT: Hang on one second. It might have been
4 a slip of the tongue, you then see a person's feet going up the
5 ladder, is that what you meant to say?

6 THE WITNESS: The feet were coming down the ladder.

7 THE COURT: All right.

8 BY MR. SCHROEDER:

9 Q. You see feet coming down the ladder?

10 A. Yes, sir.

11 Q. You order that person down?

12 A. Yes, sir.

13 Q. And that person complies?

14 A. Yes, sir.

15 Q. He's immediately taken into custody and secured?

16 A. Yes, sir.

17 Q. And at that point in time, what your testimony is you
18 don't know who else if anybody might be present there?

19 A. That's correct.

20 Q. Did you at this point in time make a determination that
21 Mr. Foley was out back and not secured?

22 A. Agent Verga had told me he was secured.

23 Q. So you know that the thrust and focus of why you went

24 there is secured?

25 A. That's correct.

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1 Q. You previously testified that none of this other drug
2 activity was important, the reason you went there, the person
3 you went there to get, was in custody and secured, correct?

4 A. Correct.

5 Q. And then you testified that you then go up the ladder to
6 examine the upstairs?

7 A. That's correct.

8 Q. And the upstairs is just one open room, it's not an
9 apartment with a separate bathroom, correct?

10 A. I can't remember if there was any small divides, there
11 was a lot of furniture and stuff piled up there.

12 Q. But as you walk through the garage, I mean a human being
13 is a fairly large conspicuous entity, correct?

14 THE COURT: Depends on the human being.

15 THE WITNESS: I found people hiding in closets,
16 cupboards, everything.

17 BY MR. SCHROEDER:

18 Q. But as you walk through the garage, you're confident that
19 there's nobody hiding in the downstairs portion?

20 A. No, sir, I was not. We came upon those individuals in
21 plain sight. That was going to be our focus. Okay. There
22 were other officers downstairs to help once we took them into
23 custody and clear, to see if anybody was hiding under anything.
24 I wanted to go upstairs at that point. I obtained backup to go
25 upstairs to see if anybody else was upstairs.

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1 Q. But you would agree with me that you never would have
2 climbed that ladder without being reasonably confident that the
3 downstairs was secure, that you would exposed yourself
4 completely by having a portion of your body above the floor?

5 MR. TRABOLD: Objection, as to the relevance of that
6 question, and it calls for speculation.

7 THE COURT: Overruled. Do you understand the
8 question?

9 THE WITNESS: Yes, sir. I would be relatively sure,
10 but not positive.

11 BY MR. SCHROEDER:

12 Q. Well, what remained to be done downstairs that led you to
13 being positive before you would have subjected yourself to that
14 potential danger?

15 A. Well, looking back on it, there are probably a lot of
16 things I would have done differently on every arrest I make.
17 The situation is fluid, okay. I did not have a whole lot of
18 time to stop and analyze every move that I make. Maybe I
19 should have done a better search downstairs. At the time,
20 okay, it seemed prudent for me to go upstairs. Whether or not
21 that was exactly the right thing to do, I guess we could
22 discuss that on and on. I don't know. I did what I thought I
23 should do.

24 Q. Well, it seemed prudent because you had adequately, in
25 your mind, protectively swept the downstairs, you were

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1 confident that you could go upstairs and look around?

2 A. There were other officers there downstairs. I had moved
3 through, taken an individual into custody, I wanted to go up
4 and check the upstairs.

5 Q. You would agree with me that when you went up the up

6 stairs, there's more or less a trap door in the floor as you go

7 up the ladder, as you come up there you're able to look around

8 the room?

9 A. That's correct.

10 Q. There wasn't any portion of that room that wasn't openly

11 conspicuous --

12 A. There were many areas of that room that were not only

13 conspicuous.

14 Q. Before you go upstairs, do you observe any of the items

15 downstairs that you detailed in your direct examination?

16 A. I observed, before I went upstairs, I observed a triple

17 beam scale, I observed the disc with the white powder on it.

18 Q. Now, the triple beam scale was all the way at the back of

19 the garage?

20 A. Over to my right.

21 Q. And the disc with the white powder, where was that?

22 A. Right by the ladder.

23 Q. And those would be items that you observed downstairs?

24 A. Yes, sir.

25 Q. And when you go up the ladder, what do you observe up

1 there, do you actually physically go all the way up?

2 A. All the way up.

3 Q. With your feet on the floor walking around?

4 A. Yes, sir.

5 Q. And what do you observe, would you tell us what you

6 observe up there?

7 A. A loaded 12-gauge shotgun. As I moved back towards the

8 front, laying out on the floor was a large container with a

9 large amount of marijuana seeds in it.

10 Q. Would you agree with me, sir, that had you just gone up

11 for protective sweep purposes, that you would have to merely

12 stick your head above or a portion of the body above --

13 A. I totally disagree with that.

14 Q. Do you believe there were areas where someone could have

15 been secreted?

16 A. I know there were areas where somebody could have been

17 secreted.

18 Q. What were they?

19 A. As I previously testified, there was furniture, there

20 were all types of obstacles up there. I mean -- it's

21 impossible to stick your head up and determine whether it was

22 clear.

23 Q. But at some point you're satisfied that there's no human

24 beings up there?

25 A. After I looked through the room, I was satisfied there

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1 were no human beings up there.

2 Q. Then you go downstairs and the other officers are still

3 inside the downstairs portion?

4 A. Yes, sir.

5 Q. Did they have Mr. Butler and Mr. Dunn inside the

6 downstairs portion?

7 A. I believe everybody was still where we put them down.

8 Q. So you put them down on the floor inside the garage. And

9 how long did you remain inside now at this point in time, you

10 were satisfied, for protective purposes, this building had been

11 adequately swept, correct?

12 A. Yes, sir.

13 Q. And yet everybody remains inside?

14 A. Yes, we were trying to figure out what we were going to

15 do at that point. We had to sort out who was who, I know the
16 state police were going to run ID checks, they were running
17 checks on the vehicles, there was still a lot of work to be
18 done.

19 Q. In fact, at this point in time, you know what you told us
20 to be the primary, the sole focus of you going in as the lead
21 agent, he's in custody already.

22 A. He's in custody.

23 Q. You have what you went there for, correct?

24 A. We had taken Mr. Foley into custody.

25 Q. And in the interest of what you were there for, you had

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1 him in custody, ultimately, he's taken to a penal institution
2 that night, you have accomplished everything you went there to
3 accomplish?

4 A. We went there to arrest Mr. Foley. We took him into
5 custody. I had observed a loaded shotgun. I observed a large
6 amount of what I believe to be marijuana seeds. I had observed
7 the triple beam scale. There was a bag of marijuana laying on
8 the floor, there was also a money wrapper that I had seen. I

9 still thought, that led me to believe, okay, that there was

10 possible criminal activity taking place.

11 Q. Without regard to that, though, you had the person you

12 went for?

13 MR. TRABOLD: Objection, asked and answered.

14 THE COURT: Overruled.

15 BY MR. SCHROEDER:

16 Q. Now, despite the fact that you have that person in

17 custody, with the other known people are secured, you then go

18 back to the house?

19 A. I do.

20 Q. And you then have further conversation with Christina

21 Weber?

22 A. I did.

23 Q. And was anyone present with you at this time, and how

24 long after you had entered the barn, did you go back to the

25 house, how much time elapsed?

1 A. As soon as we were assured everybody was secured, I don't

2 know, 15, 20 minutes.

3 Q. Everybody remains in the barn for 15, 20 minutes?

4 A. Again, I'm speculating on time, I would guess that, being
5 the state police are running IDs, they're running, just
6 everything is trying to get organized.

7 Q. You would agree with me that in terms of the 15, 20
8 minutes in the garage, common sense would tell me that
9 everybody is secured within a very short time period after the
10 entry?

11 A. Common sense would tell you what?

12 Q. That the individuals inside there are secured very soon
13 after you go in there, that is your first and foremost focus
14 going in there, is to secure the individuals in the barn?

15 A. When I left the barn, I was satisfied the barn was
16 secured.

17 Q. But those individuals, the individuals are secured right
18 away, because that's what you're doing --

19 THE COURT: Mr. Schroeder, we covered this, let's go
20 on to something else.

21 BY MR. SCHROEDER:

22 Q. So after being in the barn for 20 minutes, you then go up
23 to the house and have a conversation with Ms. Weber?

24 A. Correct.

25 Q. You then testified that you asked her if you could then

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1 go through the house?

2 A. I did.

3 Q. Now, when you went there to talk with her, where was she?

4 A. When I went through the house where was she?

5 Q. When you went back to speak with her at the house, where

6 was she?

7 A. She answered the door.

8 Q. And was there an officer present?

9 A. No.

10 THE COURT: Who was with you, you were asked that

11 initially; who was with you, this is the second conversation

12 now, after you had your first one, you're done with the garage,

13 who walks up with you to the front stoop?

14 THE WITNESS: I believe it was Agent Verga, I

15 believe, and one of the municipal officers.

16 THE COURT: So the three of you, to the best of your

17 recollection?

18 THE WITNESS: To the best of my recollection.

19 THE COURT: Go ahead.

20 BY MR. SCHROEDER:

21 Q. You've indicated she answers the door, there's no officer

22 there with her guarding her or watching her?

23 A. No, she wouldn't let us in the house.

24 Q. So that would tell me, at least for that 20 minute period

25 that you were in the barn, approximately 20 minute period, that

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1 one felt sufficiently threatened or concerned about the house

2 that they went back to keep the two individuals in the house

3 under surveillance or secured?

4 A. If I didn't feel sufficiently secure, I wouldn't have to

5 go back to the house. Like I said, I wasn't satisfied with the

6 number of officers who we had when we went there initially. I

7 would have five more or ten more if I could of, but they

8 weren't available. I wouldn't have gone back there if I felt

9 secure.

10 Q. But you would agree with me, sir, that after you secured

11 the individuals at the barn, nothing would have precluded you

12 from sending an officer back up to the house to keep them under

13 observation or surveillance if in fact you were concerned for

14 officer safety, what might be taking place in the house?

15 A. That's why I went back to the house.

16 Q. Twenty minutes later?

17 A. We kind of had our hands full there for 20 minutes.

18 Q. Your hands were full, but the individuals in the barn

19 were secured very shortly after you go into the barn?

20 A. We don't know that until we cleared the barn.

21 Q. But you cleared it right away, we established that, that

22 was the first thing that happened, was you cleared the barn?

23 A. In 20 minutes we cleared the barn. When I was satisfied,

24 that's all I can tell you, when I was satisfied that the barn

25 was cleared, I had a concern, I informed the officers I'm going

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1 back down to the house. Because I informed the officers that I

2 had observed what I thought was criminal activity taking place,

3 that I wanted that barn locked down. Then, because we were

4 going to lock down the barn, okay, and made sure that nobody

5 came or went, because of what is possible criminal activity

6 that I observed, I then wanted to go down and make sure that

7 there was nobody else in the house that was a threat to us.

8 Q. But not until however long you were in the barn had

9 elapsed, be it 15, 20 minutes, that 15, 20 minute period

10 elapses, there is no one in the house with those two females?

11 A. Correct.

12 Q. At that point you are telling us, then, after the

13 expiration of the time period, then you feel the need to go in

14 and do a protective sweep in the house?

15 A. As I told you, if we were going to leave, it would have

16 been different, we would have never gone back to the house.

17 But I had observed what I felt would be evidence of criminal

18 activity. I had asked the other officers to lock down that

19 barn. Because we were now going to stay at the scene, okay, I

20 wanted to go and check the house.

21 Q. Sir, you've already told me that the focus, you're a

22 parole agent, you are not a criminal investigator, correct?

23 A. Sir, I'm aware of my duties. I observed what I believe

24 to be criminal activity, it's my responsibility then to contact

25 the appropriate authorities and let them take action. If they

1 want to get a search warrant, if they want to continue the
2 investigation, that was up to them. That is exactly why I
3 contacted them.

4 Q. After the fact, but first you went back to the house and
5 you went through the house, correct?

6 A. Correct.

7 Q. And you already established that the individual which was
8 your focus was in custody, everybody else was secure,
9 approximately 20 minutes elapses, the females are in the house
10 alone, then you, on the basis of what you consider to be
11 criminal activity that you observe, you then made an
12 independent determination to continue the investigation?

13 A. That's not what I said.

14 Q. Well, you said you saw evidence of criminal activity?

15 A. I saw what I believe to be evidence of criminal activity,
16 I asked the other officers there to secure the barn, because we
17 were going to stay on the scene, I informed them I wanted to go
18 down. We had already been lied to. People had already tried
19 to escape. I saw evidence of criminal activity, to include
20 loaded firearms. It was dark. We had a limited number of
21 people. I wanted to go back in to the residence to make sure

22 that there was nobody else in that residence who was a possible

23 threat to us staying on the scene.

24 Q. But you had the Pennsylvania State Police and local

25 police authorities on the scene with you?

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1 A. That's correct.

2 Q. You have, according to what you told us, already observed

3 some evidence of criminal activity?

4 A. That's correct.

5 Q. Nothing would have precluded you from securing the two

6 females or whatever, from going and getting a search warrant or

7 have the appropriate authorities get a search warrant?

8 A. We did have the proper authorities get a search warrant.

9 Q. The next day, correct -- on April 18th, Trooper Basinger

10 obtained a search warrant?

11 A. I don't know why it took Trooper Basinger so long to get

12 a search warrant. We started, it was at 10 o'clock at night by

13 that time, I can't even remember what time Trooper Basinger got

14 there, we had to wait for him to get there. Then we had to

15 inform Trooper Basinger what we saw. Then Trooper Basinger had

16 to find a magistrate. Then he had to type an affidavit of

17 probable cause to get the search warrant and then come back.

18 Q. So this is all one continuous series of events, you don't

19 leave the premises?

20 A. No. We secured the premises and did not leave, no.

21 Q. Now, you previously have identified Exhibit 4 as being

22 the conditions governing parole and reparole, correct?

23 A. Yes, sir.

24 Q. And you indicate in the last paragraph down there, is a

25 consent paragraph that the individual who signs this consents

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1 to, correct?

2 A. Yes, sir.

3 Q. On page one. Now, the address at the top, the approved

4 address for Mr. Foley, that's not the address that you're at

5 that night, is it?

6 A. That's correct.

7 Q. So the consent that the defendant signed to search was of

8 his approved residence, correct?

9 A. Correct.

10 Q. And not this address?

11 A. Correct.

12 Q. Now --

13 A. That's why we didn't search it.

14 Q. You didn't search what?

15 A. The residence, that's why they got a search warrant.

16 Q. You then go through the home, is it your testimony Ms.

17 Weber goes through the home with you?

18 A. Yes, because she identified the room or that 28

19 shotgun -- the 28 sawed off shotgun which was Mr. Foley's, she

20 was with me.

21 Q. With respect to any consent, did you obtain consent from

22 her?

23 A. Yes, sir.

24 Q. You were taking the lead with respect to that aspect of

25 this?

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1 A. As I testified, I told her that I wanted to go through

2 the house to see if there were any other individuals in there.

3 I informed her that we were not going to go through her drawers

4 or anything like that. She said okay. In fact, I even told

5 the other municipal policeman that was with me, don't look in

6 any drawers, all we're doing is looking for people period.

7 Q. At the time that she consents, you've testified that you

8 say she consents you have a gun drawn?

9 A. I had my weapon out I believe then.

10 Q. At that time everybody else had already been -- the three

11 individuals in the barn had been secured for some period of

12 time?

13 A. Correct.

14 Q. She's obviously aware that there's a lot of activity,

15 there's seven officers and people being arrested?

16 MR. TRABOLD: Objection, your Honor, he can't

17 possibly know what she's aware of.

18 THE COURT: Well, what can you see.

19 BY MR. SCHROEDER:

20 Q. What can you see that she would have been aware of?

21 A. Ask that again.

22 Q. From her vantage point at the home?

23 A. I don't know where she was in the home, I have no idea

24 what she's aware of. I told her that we took Mr. Foley into

25 custody. I don't know where she was in the house.

1 Q. So you told her, she already knows at least one person
2 has been taken into custody and you're standing there with your
3 gun drawn?

4 A. Yes, sir, I had my gun out.

5 THE COURT: Excuse me, how much more do you have, if
6 you have a lot we're going to break for lunch?

7 MR. SCHROEDER: I have a good bit.

8 THE COURT: We're going to take our lunch break.

9 (Luncheon recess from 11:45 a.m.; until 1:20 p.m.)

10 THE COURT: Would the witness resume the stand,
11 please. All right, Mr. Schroeder.

12 BY MR. SCHROEDER:

13 Q. Officer Wehrle, in connection with your duties as a
14 parole officer, do you prepare reports in the normal course of
15 doing business?

16 A. Yes.

17 Q. Did you prepare a report with respect to this incident?

18 A. No, we only prepare reports on the cases that we
19 supervise.

20 Q. When you say "we", whom are you referring to?

21 A. Agents.

22 Q. Is it your testimony that there is no report whatsoever

23 with regard to this incident?

24 MR. TRABOLD: Your Honor, I'm going to object,

25 counsel is not entitled to the report at this stage of the

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1 proceedings anyways, whether he has a report or doesn't have a

2 report is of no consequence.

3 MR. SCHROEDER: I wouldn't necessarily agree with

4 counsel's position.

5 THE COURT: But I'm listening between the lines,

6 tell me if this is wrong. You didn't generate a report, is

7 that right?

8 THE WITNESS: Yes, sir, that's correct.

9 THE COURT: All right, then there's no report to

10 give. I don't have to decide Mr. Trabold's point as to whether

11 you're entitled to that which does not exist.

12 BY MR. SCHROEDER:

13 Q. My next question was, to your knowledge was there a

14 report prepared at all?

15 A. Yes, sir, there was.

16 Q. And the report was prepared by Agent Verga?

17 A. That's correct.

18 Q. Now, having reviewed that report, there's no question

19 that the conclusion you reached, based upon your investigation,

20 was that Mr. Foley was staying at this location?

21 A. Say that again.

22 Q. Is it accurate to conclude that you folks felt that he

23 was staying at that location at least, even though it wasn't

24 his approved residence, you concluded he was staying there?

25 THE COURT: Do you understand the question?

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1 THE WITNESS: Prior to arresting him or after?

2 BY MR. SCHROEDER:

3 Q. After.

4 A. After, yes, sir.

5 Q. Thank you.

6 THE COURT: I want to make sure I'm following this.

7 After they arrested him, they knew he was there because they

8 arrested him?

9 MR. SCHROEDER: Your Honor, with all due respect,

10 there would be a difference between being there and staying

11 there.

12 THE COURT: All right, go ahead.

13 BY MR. SCHROEDER:

14 Q. With respect to Mr. Foley, in your direct examination I

15 did not hear you ever testify to any specific knowledge,

16 information or evidence that you knew him to be a dangerous

17 person, is that correct?

18 A. Did I testify to that?

19 Q. Yes.

20 A. No one asked me the question.

21 Q. And do you have any evidence or information or knowledge,

22 based on his parole record, that in fact he was a dangerous

23 individual?

24 A. I consider any fugitive a dangerous individual.

25 Q. But looking at his prior record, he never had any

1 offenses of violence in his prior record, correct?

2 A. I don't remember.

3 Q. And do you recall any specific evidence or information

4 that other than your general conclusion that labeled him a

5 dangerous or violent individual?

6 A. I don't remember.

7 Q. Now, with respect to evidence, would I be correct, sir,

8 that at various points in time you actually seized physical

9 evidence before the state police obtained a warrant the next

10 day?

11 A. The only evidence that we seized would be weapons, loaded

12 weapons. I secured them.

13 Q. So you actually took those items, picked them up, secured

14 them or seized them, anything else that you did?

15 A. I picked up the marijuana that was laying on the floor.

16 Q. And you did this despite the fact that the premises,

17 after everything has taken place, the premises were in fact

18 secured, there were agents waiting for Trooper Basinger to

19 obtain a warrant?

20 A. I picked up the marijuana off the floor before we even

21 called Trooper Basinger.

22 Q. Now, with respect to Christina Weber, I would be correct

23 in concluding that you never obtained any written consent from

24 her to search the premises at any point in time?

25 A. That's correct.

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1 Q. And with respect to when you obtained consent from her to

2 search the premises, when did you, as precisely as you recall,

3 when did you actually obtain consent from her to search the

4 premises?

5 A. After I felt that the garage was secure, I went back down

6 to the house, knocked on the door and told her that we had

7 taken Mr. Foley into custody, told her that I wanted to go

8 through the house to see if anybody else was in the house.

9 Q. She was in fact arrested and charged in this matter in

10 state court, correct?

11 A. I believe the state police arrested her, yes, sir.

12 Q. But you were taking the lead with respect to obtaining

13 consent from her at that point in time or you took the lead

14 with respect to this entire investigation?

15 A. I'd say so.

16 Q. And you indicated that you had your weapon drawn?

17 A. I didn't have it pointed at her, I still had it drawn.

18 Q. Did you advise her that she had the right not to consent?

19 A. I did.

20 Q. Was anyone present when you advised her of that right?

21 A. There was.

22 Q. Who?

23 A. I believe Agent Verga was there, I believe one of the

24 municipal police officers was with me.

25 Q. In fact, sir, based on the fact she was charged and taken

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1 to jail, she was essentially in custody at that point in time?

2 A. No, she wasn't.

3 Q. It's your conclusion she was not in custody?

4 A. No, she could have left. I didn't take her into custody,

5 I didn't arrest her.

6 Q. Sir, did you ever examine the vehicle that you indicated

7 started on its own?

8 A. I did not.

9 Q. To determine whether it had a remote starter?

10 A. I did not.

11 Q. Did you actually hear that start yourself?

12 A. I saw the lights and everything come on.

13 Q. You were standing very close to it, correct?

14 A. Fairly close.

15 Q. But you do not recall hearing the engine come on?

16 A. I don't recall hearing the engine come on. I know that I

17 was alerted, I knew what was going on, I saw the lights come on

18 because I announced to the other officers, look out, the

19 truck's starting.

20 MR. SCHROEDER: Thank you, I have nothing further.

21 THE COURT: All right.

22 REDIRECT EXAMINATION

23 BY MR. TRABOLD:

24 Q. Mr. Wehrle, counsel keeps saying you got the search

25 warrant the next day. Is it accurate to say that the next day

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1 would have been two hours after you actually went on to Mr.

2 Foley's property?

3 A. Yes, sir, that would be correct.

4 Q. So the next day is not a period of 24 hours, it's a

5 little more than two hours?

6 A. No, they were working on that from the time we contacted

7 Trooper Basinger, it was just a matter of administration until

8 he got back with the warrant.

9 Q. But my point is you didn't even go onto the property

10 until 10 o'clock at night?

11 A. That's correct, yes, sir.

12 Q. Now, I think you said when you went into the house, Ms.

13 Weber took you through the house, correct?

14 A. Correct.

15 Q. And you went into a room where there was a firearm laying

16 on a bed or in that room?

17 A. That's correct.

18 Q. Did Ms. Weber identify whose room that was?

19 A. She stated it was Mr. Foley's room.

20 Q. From that you concluded that Mr. Foley was staying there?

21 A. I did.

22 Q. When the vehicle that counsel had just asked you about,

23 the dually pickup truck, when that went on or turned on or

24 whatever happened to it, where were you?

25 A. I was knocking at the door.

1 Q. Again, how far would the vehicle have been from you,

2 approximately?

3 A. I'd say 20 feet.

4 Q. In relation to you, was it behind you, in front of you,

5 to the side of you?

6 A. Behind me.

7 Q. And did the vehicle starting, whatever happened to the

8 vehicle, cause you a safety concern?

9 A. Certainly did.

10 Q. In what regard?

11 A. Ms. Weber had been less than harmonious with us, okay.

12 I didn't feel we had enough officers there to do what we were

13 going to do anyway. But when I'm knocking and announcing,

14 nobody is answering the door, and all of a sudden the lights

15 come on in the pickup truck, my first thought is somebody is

16 going to try to escape. Obviously, you activate your vehicle

17 from inside.

18 Q. Counsel asked you questions concerning Ms. Weber being

19 arrested and charged with a crime, you said she was charged

20 with hindering apprehension. You didn't charge her with that?

21 A. I did not.

22 Q. At the point in time when you dealt with her and she said

23 yes, you can come in the house, was she in custody?

24 A. She was not.

25 Q. Did you ever handcuff her?

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1 A. I did not.

2 Q. Were you even around when she was placed under arrest by

3 the state police?

4 A. I was on the premises but I don't believe I was in her

5 immediate vicinity when she was placed into custody.

6 Q. How long would that have been when she was placed into

7 custody from when you got consent from her to enter the

8 residence, approximately?

9 A. I'd hate to even say because I don't know, I had nothing

10 to do with taking her into custody.

11 Q. Would it be fair to say that a significant amount of time

12 elapsed from the time she gave you consent until the time she

13 was in custody?

14 A. I would say so.

15 Q. And the person that put her into custody, was that person
16 even there when you were getting her consent?

17 A. No, sir.

18 Q. That would be Trooper Basinger?

19 A. I believe so, yes, sir.

20 Q. Now, you knock and announce and no one answers for a
21 while, you do that for a little while, once the door opens and
22 you take that person into custody, were events transpiring very
23 quickly or were things moving slowly, did you have time to
24 react; explain how quickly things were moving?

25 A. From the time that the vehicle was activated until Mr.

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1 Butler answered the door, okay, that was a very short period of
2 time. As soon as I had Mr. Butler on the ground, I saw the
3 legs on the ladder, then I immediately started to move back
4 towards the rear of the garage. Everything was happening in
5 rapid succession.

6 MR. TRABOLD: Nothing further, your Honor.

7 THE COURT: All right. Thank you, sir.

8 MR. TRABOLD: Your Honor, the United States calls

9 Jerry Verga.

10 THE CLERK: Raise your right hand, please.

11 GERALD VERGA, GOVERNMENT WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. TRABOLD:

14 Q. Sir, can you state your name?

15 A. Gerald Verga.

16 Q. How do you spell your last name?

17 A. V, as in Victor, e-r-g-a.

18 Q. Where are you employed?

19 A. With the Board of Probation and Parole.

20 Q. How long have you worked there?

21 A. Nine years, nine months.

22 Q. In your capacity with the Board of Probation and Parole,

23 were you involved in the entry onto the property on Hill Road

24 in Saegertown on April 17th of 2003?

25 A. Yes, I was.

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1 Q. And we've already heard from prior witnesses at length

2 about how that transpired, and I want to focus your testimony

3 on a few issues involved with that. You went onto the property

4 at approximately what time?

5 A. Oh, I would say around 10 p.m.

6 Q. Prior to going onto the property, were you the parole

7 officer that was in charge of Mr. Foley's case at the point in

8 time that you went onto the property to apprehend him?

9 A. I was the agent of record, that's correct.

10 Q. Is it fair to say that since Mr. Foley had been an

11 absconder for a period of almost three years, you hadn't had

12 really any contact with him?

13 A. That's correct.

14 Q. You didn't actually supervise him on parole?

15 A. That's correct.

16 Q. You go onto the property at approximately 10 o'clock at

17 night, and where do you go?

18 A. We went to the house originally.

19 Q. You and who else?

20 A. Agent Wehrle, Trooper Reinhart.

21 Q. And does there come a point in time during your time at

22 the residence where you speak to a person by the name of Angela

23 Carbone?

24 A. Yes, that's correct.

25 Q. And how does that transpire?

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1 A. Agent Wehrle, as I stated earlier, and Trooper Reinhart

2 and myself approached the house, announced "state parole

3 agents, police." At which time Ms. Christina Weber came to the

4 door, and Ms. Carbone. And it was at that time that we had

5 spoke with Ms. Carbone.

6 Q. Now, does Ms. Weber indicate that she knows Mr. Foley to

7 be on the property during the course of this conversation?

8 A. No.

9 Q. She says she doesn't know where he is?

10 A. Correct.

11 Q. Do you then undertake a conversation with Ms. Carbone?

12 A. I don't directly, Agent Wehrle does.

13 Q. Did you have some prior knowledge or prior dealings with

14 Ms. Carbone?

15 A. That's correct.

16 Q. And during the course of Agent Wehrle's conversation with

17 Ms. Carbone, does she reveal that there are other people on the

18 property?

19 A. Yes.

20 Q. What does she say in that regard?

21 A. She says that there's people up in the outbuilding, the

22 garage.

23 Q. And does she specifically identify one of the people as

24 being her boyfriend?

25 A. That's correct.

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1 Q. And based upon that information, what do you and Agent

2 Wehrle then do?

3 A. We proceed to the outbuilding, the garage.

4 Q. And where do you position yourself?

5 A. I'm positioned on the corner of the garage.

6 Q. So you can see the front, as well as the side?

7 A. That's correct.

8 Q. Did you approach the front man door to the garage?

9 A. No, I did not.

10 Q. Who did that?

11 A. Agent Wehrle and Trooper Reinhart and I believe there

12 were several other officers.

13 Q. How far would you say you were away from the man door
14 when Agent Wehrle approached the man door?

15 A. Fifteen feet maybe.

16 Q. And from your vantage point, you had an opportunity to
17 see the man door, as well as down the side of the garage or the
18 outbuilding?

19 A. That's correct.

20 Q. Does there come a point in time when Agent Wehrle enters
21 the garage?

22 A. That's correct.

23 Q. Prior to Agent Wehrle entering the garage, do you hear
24 him say anything prior to actually entering the garage?

25 A. Yes, Agent Wehrle announced "state parole agents, police,

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1 open up."

2 Q. And after a period of time does the door open?

3 A. The door does open.

4 Q. Is that an immediate thing after he knocks and announces
5 or does it take sometime?

6 A. I takes sometime.

7 Q. What happens then once you see Agent Wehrle begin to
8 enter that garage, what happens?

9 A. As Agent Wehrle enters with Trooper Reinhart and the rest
10 of the officers, I hear what's tantamount to loud yelling on
11 the side of the garage. At that point in time, I seen an
12 individual leaving the building and I see Trooper Whitman, as
13 I'm approaching, giving this individual commands, instructions,
14 orders, put your hands up, get down on the ground.

15 Q. And is this in the area behind this garage or to the
16 side?

17 A. It's to the side, as I recollect.

18 Q. What are the lighting conditions like in that area?

19 A. Low light.

20 Q. Difficult to see?

21 A. Yes.

22 Q. You then approach that area?

23 A. That's correct.

24 Q. And what do you see Trooper Whitman doing?

25 A. Trooper Whitman has his weapon drawn, giving the

1 individual, as I just said, instructions, orders, commands,

2 get your hands up in the air, state police.

3 Q. Does the individual comply?

4 A. The individual does comply.

5 Q. And then what happens?

6 A. At that time I approach. The individual was down on the

7 ground, I cuffed the individual, and at that point in time I

8 recognized the individual as being Mr. Maurice Foley.

9 Q. Prior to you recognizing the person that's on the ground

10 as Maurice Foley, do you hear that person saying anything, like

11 I'm Maurice Foley, or identifying themselves in any way?

12 A. No.

13 Q. And you knew it was Maurice Foley how?

14 A. I knew it was Maurice Foley because at one point in time

15 Agent Wright, who's no longer with our agency, supervised this

16 individual, and Agent Wright and I had the same duty day. So I

17 was in contact with Agent Wright's parolees because we shared

18 the same interview room. So when these individuals would come

19 into report as instructed, it was not uncommon that I would

20 know some of Agent Wright's parolees and vice-versa. So I knew

21 who Maurice Foley was, I could ID him.

22 Q. You see this person down on the ground, you identify them
23 as Maurice Foley; does Mr. Foley say anything to you at that
24 point in time?

25 A. Not that I recollect.

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1 Q. What do you do then after you positively identified that
2 person as Maurice Foley, what steps do you then take?

3 A. Well, at that point in time I asked Trooper Whitman if he
4 was you know safe with this situation. I believe at that point
5 in time an officer proceeded, and he said yes, he had control
6 of the situation, the suspect. At that time I went back to the
7 front of the outbuilding and entered the premises.

8 Q. And what did you see occurring inside the premises of the
9 outbuilding when you went in?

10 A. As I entered the outbuilding, as I went through the man
11 door, there was an individual that was cuffed, there was an
12 officer detaining him. As I approached the back, I saw officer
13 or Agent Wehrle along with Trooper Reinhart and another
14 individual in the process of cuffing him. It was at that point
15 in time that I approached and finished securing that individual

16 and remained as a cover agent with respect to that particular
17 area.

18 Q. At what point in time did you notify or tell Agent Wehrle
19 that Maurice Foley was apprehended out back?

20 A. It was at that time I said we have Maurice Foley.

21 Q. Simultaneous with this second individual being detained
22 inside the garage?

23 A. That's correct.

24 Q. And does Agent Wehrle then go up the stairs into the
25 second floor of the garage?

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1 A. He does, that's correct.

2 Q. Did you notice while you were inside that garage any
3 items of obvious contraband out in the open?

4 A. There appeared to be some loose leafy green substances.
5 I believe there was some plastic bags, things of that nature.

6 Q. So there were items that you considered to be contraband
7 inside the garage?

8 A. That's correct.

9 Q. Now, subsequent to everyone being secured in the area of

10 the garage being secured, do you go somewhere with Agent

11 Wehrle?

12 A. Yes, I did.

13 Q. Where do you go?

14 A. We then proceed back to the main house.

15 Q. Before we go back to the main house -- did you at any

16 point in time go up into the second floor of the garage?

17 A. No, I did not.

18 Q. You then go to the main residence with Agent Wehrle?

19 A. That's correct.

20 Q. Just the two of you or is there anyone else with you?

21 A. I believe there was Trooper Reinhart and other officers

22 that I recollect.

23 THE COURT: Who was with you, besides you and Agent

24 Wehrle?

25 THE WITNESS: Trooper Reinhart, judge, and several

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1 other officers.

2 BY MR. TRABOLD:

3 Q. What happens when you go back up to the residence?

4 A. Ms. Christina Weber was there. And it was at that time
5 that Agent Wehrle explained to her that we had Maurice Foley
6 and that we wished to have her give us a consent to search the
7 residence. Merely for officer safety, to see if there was any
8 other individuals with respect to our security.

9 Q. And prior to asking her that, did Agent Wehrle place
10 handcuffs on her or tell her she was under arrest?

11 A. No.

12 Q. Did any other officers do those things?

13 A. No.

14 Q. Did you have your gun drawn?

15 A. I don't believe it was drawn. I don't recall.

16 Q. Is it possible that you had your gun out?

17 A. I possibly could have had it out.

18 Q. Was Ms. Weber threatened or physically touched in any
19 way?

20 A. Absolutely not.

21 Q. Did she willingly allow Agent Wehrle to go into the
22 residence?

23 A. Yes.

24 Q. Did you also go into the residence?

25 A. Yes, I did.

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1 Q. What happened when you went into the residence?

2 A. When we went into the residence, as I recall Agent Wehrle

3 asked where Maurice Foley's bedroom was, where he was staying.

4 She pointed to an area in the back of the residence, I believe

5 it would have been just off the kitchen.

6 Q. And you noticed items -- did you notice items in this

7 bedroom area that she identified that were obvious contraband?

8 A. Yes.

9 Q. What type of items?

10 A. Well, there was -- the most prominent thing that struck

11 me, there was a pistol gripped shotgun, I believe, 20-gauge

12 shotgun. I believe there was another firearm there. There

13 were belts of spent, might have been AK-47 or M-16 ammunition.

14 Q. Prior to Ms. Weber giving consent, did Agent Wehrle tell

15 her that she didn't have to consent?

16 A. Yes.

17 Q. Was there ever any hesitation by her to as to whether she

18 didn't want to consent or she wasn't sure?

19 A. Not that I recollect.

20 Q. The first time you went up to the house, did she let you
21 into the house?

22 A. No, she did not.

23 Q. Did anyone force their way into the house the first time?

24 A. No.

25 MR. TRABOLD: One moment, your Honor. Nothing

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1 further.

2 CROSS-EXAMINATION

3 BY MR. SCHROEDER:

4 Q. Agent Verga, you prepared a report in connection with
5 this matter, correct?

6 A. Correct.

7 Q. It's a three-page written report?

8 A. Yes.

9 Q. And it was prepared on April 21, 2003, approximately a
10 year and a half ago?

11 A. Correct.

12 THE COURT: Keep your voice up, Mr. Schroeder.

13 BY MR. SCHROEDER:

14 Q. It was prepared April 21, 2003, approximately a year and
15 a half ago?

16 A. Correct.

17 Q. You would agree with me, when you prepare a written
18 report several days after an incident, chances are that report
19 is going to be more accurate than your recollection a year and
20 a half later?

21 A. Yes.

22 Q. Have you reviewed that report today, sir?

23 A. Yes.

24 Q. Do you have that report with you, sir?

25 A. No, I don't.

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1 Q. I'm going to hand you this document, sir -- which it has
2 been marked as Defendant's Exhibit B, I'm going to ask you,
3 sir, whether you recognize that three-page document,
4 Defendant's Exhibit B?

5 A. Yes, I do.

6 Q. And that would be the report that you prepared and signed

7 on April 21, 2003?

8 A. Correct.

9 Q. Now, calling your attention to the first page of that

10 report. Would you agree that this is a technical violation

11 arrest report prepared in connection with your duties as a

12 state parole officer, correct?

13 A. Correct.

14 Q. You are not an investigating police officer, you are a

15 state parole officer, correct?

16 A. Correct.

17 Q. In the middle of that it talks about evidence

18 confiscated, am I correct when I read "when this agent and

19 Agent Wehrle were conducting our search, we did find several

20 weapons, what appeared to be amounts of a green leafy

21 substance, and drug paraphernalia. It was determined that we

22 should stop and proceed with a warrant," w/a, which I'm

23 presuming is with a warrant?

24 A. Yes.

25 Q. "Which the PSP did secure." So in this middle paragraph

1 of page one, you make a statement that you're conducting a

2 search without a warrant, correct?

3 A. Well, we had a warrant for a parole prisoner.

4 Q. You had an arrest warrant for a parole prisoner, but you

5 did not have a search warrant to search the premises?

6 A. We did not have a search warrant, that's why we stopped.

7 Q. Now, sir, I want to call your attention to page two of

8 that report. Did you review this report before you testified

9 today?

10 A. No, I did not.

11 Q. Would you take a few minutes and review this, sir?

12 A. Okay.

13 Q. Have you reviewed the entire report?

14 A. Yes, sir.

15 Q. With respect to page two of the report, page one of the

16 supervision history, that states at the bottom, it gives

17 basically a chronology of what happened here, correct?

18 A. Yes.

19 Q. "2130 hours, this agent," and again, sir, these are your

20 words that you typed up or put in the computer, and you

21 prepared this document four days after this incident, correct?

22 A. Yes, that's correct.

23 Q. And it states, "this agent," that would be you, "Agent
24 Wehrle and Trooper Reinhart met with Sergeant Detzel, Sergeant
25 Nichols and Chief Eric Johnston of the Cambridge Township,

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1 P.D., Corporal Joseph Rossman of the PA State Police, and
2 Trooper Jason Whitman;" those are all individuals that you
3 reported being present, correct?

4 A. That's correct.

5 Q. Then skip down a little bit, the report indicates "Agent
6 Wehrle knocked on the door and announced, 'state Parole agents
7 and state police, open the door'." Now, in the context of this
8 report, that is at the house initially, correct?

9 A. That's correct.

10 Q. Then you go a little further down and it talks about
11 meeting Christina Weber, continue to question her, meeting
12 Angie Carbone. And then you state in your report, " Ms. Weber
13 culminated in her allowing us to and giving us consent to
14 search the premises. Ms. Weber then admitted that parolee had
15 been staying at the residence and a search of the parolee's
16 bedroom revealed, in plain sight, a pistol gripped 20-gauge

17 shotgun and in the corner of the bedroom, a single shot

18 12-guage," correct?

19 A. That's correct.

20 Q. Now, when you read that in connection with the next page

21 of the supervision history, then the next page goes into the

22 chronology that occurs at the barn, correct?

23 A. Correct.

24 Q. When you testified on direct examination a few moments

25 ago, I believe your exact words were the first time in that

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1 house she did not let us in the house?

2 A. That's correct.

3 Q. In view of your report now, that would not be accurate,

4 would it?

5 A. That's correct.

6 Q. It's correct that it's not accurate?

7 A. In the chronology of the report, we did not enter the

8 residence, we did not secure that weapon until after the

9 incidents at the barn.

10 Q. Well, if you read on in your report, it says "these

11 weapons were confiscated and secured. The two white females
12 were escorted outside the residence, at which time Chief Eric
13 Johnson took possession of the weapons and the two white
14 females were placed in his charge." Then the report says on
15 page two, "it was at this time that this agent, Agent Wehrle,
16 and Trooper Reinhart went to an outbuilding that could be
17 describe as a large barn/garage setting," correct?

18 A. Yes.

19 Q. Now, in the chronology of your report as it lays it out,
20 the search as you characterize it, has the search of the house
21 occurring first, weapons and items being seized, and then,
22 according to the report, a fair reading of the language of the
23 report, then you go to the garage, and everything that takes
24 place at the barn/garage occurs then, correct?

25 A. According to this, yes.

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1 Q. Is it your testimony that this report is incorrect?

2 A. Yes. Based on the chronology of the fact that we went to
3 the house first, then to the barn, secured the individual, and
4 then went back and searched. So this report is in error.

5 Q. But you would agree with me this was prepared four days
6 after the incident?

7 A. That's correct.

8 Q. At a time when your memory and recollection is much
9 better, just given human frailties, than it would be today?

10 A. That's correct.

11 Q. And you would agree with me that any reading of this
12 clearly establishes that a search of the house was done before
13 you went to the garage?

14 A. That's correct.

15 Q. But your testimony is that this is not accurate --

16 A. That's correct.

17 Q. As I'm reading it. Then the report goes on further to
18 state that "Agent Wehrle began to knock at that door and
19 announce, 'state parole agents and state police, open the
20 door'," and that's in quotation marks, correct?

21 A. Correct.

22 Q. And then it says "it was at this time, as this agent was
23 serving as a cover agent at the corner of the building, that a
24 white male exited a door located towards the rear of the
25 building," correct?

1 A. Correct.

2 Q. It doesn't talk about any knock and announce and waiting
3 20 or 30 seconds, and further knock and announce; your report
4 prepared then says "it was at this time?"

5 A. Correct.

6 Q. So the individual exited the building immediately,
7 according to your report?

8 A. Well, within several seconds, I said 20, it could have
9 been 5, 10 seconds.

10 Q. But as you recorded it "it was at this time" in the
11 report. Then the report goes further to say that "Trooper
12 Whitman of the PSP began to give this white male verbal
13 commands. This agent assisted Trooper Whitman in taking this
14 white male into custody, and upon parolee being taken into
15 custody and being secured, he was left in the charge of Trooper
16 Whitman," correct?

17 A. Correct.

18 Q. The parolee, that would be the defendant, Mr. Foley?

19 A. Correct.

20 Q. Now, your purpose in going there was to apprehend and

21 secure Mr. Foley, correct?

22 A. That's correct.

23 Q. And you would agree with me, then, based upon this

24 report, that it was just your testimony a moment ago, within

25 just a couple of seconds of arriving at the scene, you

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1 accomplished your stated purpose and intention in going there?

2 A. That would be correct.

3 Q. Which was to apprehend Mr. Foley?

4 A. That would be correct.

5 Q. And at the time there were other police officers present

6 with you, correct?

7 A. Correct.

8 Q. Then the report goes further to say, "this agent," that

9 would be you, "returned to his cover position and noted that

10 Agency Wehrle, Trooper Reinhart, Corporal Rossman of PSP were

11 inside the dwelling and had an older white male secured and

12 were proceeding to clear the rest of the dwelling." So this

13 would be happening shortly thereafter as well, correct?

14 A. Correct.

15 Q. When you're at the scene of something like this, your
16 immediate attention, the highest priority was to secure the
17 individuals in the building first, that occurs very soon after
18 going into the building, correct?

19 A. Correct.

20 Q. "Two other white males who had retreated to the top floor
21 of the residence were also secured --

22 THE COURT: Too fast, you have to slow down.

23 MR. SCHROEDER: I'm sorry, your Honor.

24 BY MR. SCHROEDER:

25 Q. "Two other white males who had retreated to the top floor

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1 of the residence were also secured and placed into custody."

2 So the report indicates that two males had gone upstairs?

3 A. I thought there were two males.

4 Q. Do you recall differently today?

5 A. I thought there were two -- what happened was, as I had

6 testified earlier, was as I entered the building and went

7 through the threshold, there was an individual cuffed and being

8 detained by an officer. As I proceeded to the back of the

9 building, Agent Wehrle and Trooper Reinhart had another

10 individual secured. I finished cuffing the individual and

11 secured that individual. It was at that time that Agent Wehrle

12 and Trooper Reinhart proceeded upstairs to clear the rest of

13 the building.

14 Q. The report indicates "it should be noted that Trooper

15 Reinhart and Agent Wehrle did retrieve a loaded 12-guage pump

16 shotgun." So they seized an item at that point?

17 A. Yes.

18 Q. "Upon clearing the residence of any other occupants, all

19 three white males that were in the building were placed in an

20 area where they could be observed by appropriate law

21 enforcement personal." Is that what the report says?

22 A. Correct.

23 Q. The way you worded the report on that date, the building

24 is completely secure and the occupants are secured and taken

25 into custody and represent no further threat to officer safety,

1 correct?

2 A. In that particular building, yes.

3 Q. Then it states "upon clearing the building, several bags
4 of what appeared to be a green leafy substance were in plain
5 view on the floor towards the rear of the building." Now, this
6 paragraph comes in, at least in a temporal sense, after you
7 write that the individuals had been secured and cleared?

8 A. Correct.

9 Q. So there is at least some observation and some search
10 taking place after the individuals had been secured and the
11 building was cleared?

12 A. Some observation, there was no search, that was in plain
13 sight.

14 Q. Then it makes reference to "a green safe for firearms
15 with a combination lock was also observed by law enforcement
16 personnel?"

17 A. Correct.

18 Q. "Upon clearing the barn/garage, agents and police
19 retreated to the main residence at which time this agent
20 confiscated a 30-06 scoped rifle that was fully loaded and a
21 number of shells?"

22 A. Correct.

23 Q. So the agents then confiscated the weapon?

24 A. That's correct.

25 Q. "Also retrieved were two magazine clips, fully loaded,

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1 for an AK-47, approximately 1,000 rounds of ammunition, two

2 holsters used for small automatic pistols." Then you state

3 "it was at this time that this agent and Agent Wehrle ceased

4 our search and requested a search warrant from the PA State

5 Police?"

6 A. That's correct.

7 Q. So you acknowledge in the report that you were conducting

8 a search, after the individuals had been secured, after the

9 officer safety was no longer an issue because they're all

10 secured and in custody?

11 A. Not a search per se.

12 Q. Those are your words --

13 THE COURT: Hang on a second, let him answer the

14 question.

15 MR. SCHROEDER: I'm sorry.

16 THE COURT: Go ahead.

17 THE WITNESS: Thank you, judge. It was not a search

18 per se, these items that were retrieved were in plain sight.

19 BY MR. SCHROEDER:

20 Q. But they were in fact retrieved?

21 A. Yes, they were.

22 Q. They were confiscated?

23 A. That's correct.

24 Q. And in your report in multiple instances you use the word

25 "a search," correct?

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1 A. Correct.

2 Q. Now, with respect to the knock and announce situation,

3 how many knocks and announces do you recall after you had the

4 opportunity to review your report?

5 A. Several.

6 Q. You recall several before the individual went out of the

7 building?

8 A. That's correct.

9 Q. You go back up to the home after this then?

10 A. That's correct.

11 Q. And is it your testimony then that the only search or

12 entry of the interior of the premises of the home occurs at
13 this point and not what is reflected inside your written report
14 here?

15 A. That's correct.

16 Q. And it is at this time that certain items were seized in
17 the home as well?

18 A. That's correct.

19 Q. And this search was based upon consent given by Ms.
20 Weber?

21 A. That's correct.

22 Q. You would agree with me there is no written consent form
23 signed?

24 A. The consent was for us to search the residence, Mr.
25 Schroeder, for officer safety to clear the house. It wasn't a

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1 search per se in that we were going through drawers, looking
2 under mattresses, things of that nature. Just to clarify that
3 issue.

4 Q. But, in any event, whatever was done, was done by
5 consent?

6 A. By Ms. Weber's consent, that's correct.

7 Q. And was this done in your presence?

8 A. That's correct, yes.

9 Q. And you would agree with me at that time at least one

10 officer had a weapon drawn?

11 A. Yes, that's correct.

12 Q. You would agree with me at that time at least several

13 people are already in custody?

14 A. Correct.

15 Q. You would agree with me that Ms. Weber was ultimately

16 charged with hindering apprehension?

17 A. That I'm not sure of, that very well could be.

18 Q. If in fact she was charged with Hindering apprehension,

19 that's not entirely consistent with somebody giving consent to

20 search the premises?

21 A. That sounds like somewhat of a moot issue, sir, I'm not

22 familiar with that.

23 Q. You would agree with me, did you hear her given an

24 explanation that she did not have to consent?

25 A. Yes, Agent Wehrle did state that.

1 Q. And you were standing right there when that happened?

2 A. That's correct.

3 MR. SCHROEDER: One moment, please, your Honor.

4 Nothing further, your Honor.

5 THE COURT: Anything else?

6 MR. TRABOLD: Just briefly, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. TRABOLD:

9 Q. Do you have a copy of the report in front of you?

10 A. Yes, sir.

11 Q. Can you turn to where it says page 2 of 2, which would

12 be, I guess it says analysis of prior criminal history there --

13 up here where it says -- see where the sentence begins "upon

14 clearing the barn/garage?"

15 A. Yes, I see it.

16 Q. Can you read for the court what you wrote there in that

17 sentence?

18 A. "Upon clearing the building, several bags of what

19 appeared to be a green leafy substance were in plain view on

20 the floor" --

21 THE COURT: You have to slow down, would you be so

22 kind as to start that all over again.

23 THE WITNESS: Yes, sir. "Upon clearing the

24 building, several bags of what appeared to be a green leafy

25 substance" --

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1 BY MR. TRABOLD:

2 Q. Go down a little, I'm sorry, where it says, the sentence

3 down or two down from there, where it says "upon clearing the

4 barn/garage?"

5 A. I beg your pardon. Okay. "Upon clearing the

6 barn/garage, agents and police retreated to the main residence

7 at which time this agent confiscated a 30-06 scoped rifle that

8 was fully loaded and a number of shells. Also retrieved were

9 two magazine clips, fully loaded, for an AK-47, approximately

10 1,000 rounds of ammunition, two holsters used for small

11 automatic pistols."

12 Q. Okay. Your report does indicate that after the

13 barn/garage areas were secured, you then went back up to the

14 house and went in the house and secured some firearms?

15 A. That's correct, sir.

16 Q. And ammunition?

17 A. That's correct.

18 Q. How long have you been a parole agent?

19 A. Nine years, nine months.

20 Q. And is it common ordinary practice for when you go out to

21 apprehend a fugitive, to turn a blind eye to any criminal

22 activity that may be going on there?

23 A. No, sir.

24 Q. I mean, would it have been ordinary practice for you and

25 Agent Wehrle to apprehend Mr. Foley and not even consider

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1 whether there was any contraband in the area where you

2 apprehended him?

3 A. No, sir.

4 Q. And as a law enforcement officer, you're charged with the

5 duty to uphold the law?

6 A. That's correct, sir.

7 Q. So it would have been completely outside your procedure

8 and protocol to ignore what amounts to a mountain full of

9 contraband lying on this property?

10 A. That's correct.

11 MR. TRABOLD: Nothing further.

12 MR. SCHROEDER: Nothing further, your Honor.

13 THE COURT: You're excused.

14 MR. TRABOLD: Your Honor, that is all the government

15 has.

16 THE COURT: Do you have anybody, Mr. Schroeder?

17 MR. SCHROEDER: Your Honor, may I ask for a brief

18 recess to consult with Mr. Foley.

19 THE COURT: Can't you consult with him right there.

20 (Discussion held off the record between the

21 Defendant and Defense Counsel.)

22 THE COURT: Mr. Schroeder, I'll give you a little

23 more time, we'll will take a short recess.

24 (Recess from 2:08 p.m.; until 2:15 p.m.)

25 THE COURT: Mr. Schroeder, do you have anything?

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1 MR. SCHROEDER: Your Honor, at this time the defense

2 would move for the admission of Defendant's Exhibits A and B.

3 THE COURT: Those are admitted.

4 MR. SCHROEDER: And the defense would note for the
5 record that I've had approximately 10, 15 minutes to discuss
6 the issue with the defendant, and that the defense at this time
7 is resting, not presenting evidence or testimony with respect
8 to the suppression issue.

9 THE COURT: All right.

10 MR. TRABOLD: Your Honor, I would move for the
11 admission of Government Exhibits 1 through 5. If the court
12 wishes, we can also mark as Exhibit 6 the state police search
13 warrant, the initial search warrant?

14 THE COURT: Is that the one that was obtained, I was
15 going to ask about that because that should be a part of the
16 record because I'm going to refer to it in my ruling. Let's
17 make it part of the record. Is that the one obtained from the
18 DJ?

19 MR. TRABOLD: Correct. I believe I have it here,
20 give me a second to locate it.

21 MR. SCHROEDER: We would ask that the entire
22 warrant be admitted with all the documents attached to it as
23 well.

24 THE COURT: I don't know what you're referring to?

25 MR. SCHROEDER: The warrant and the affidavit.

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1 THE COURT: Yes.

2 MR. TRABOLD: I have the whole thing. I'm trying to
3 locate it, your Honor.

4 THE COURT: You don't have to do it right now. You
5 can identify it, I have a copy of it.

6 MR. TRABOLD: That would be Government's 6, your
7 Honor.

8 THE COURT: All right, then they're admitted.

9 MR. SCHROEDER: One other housekeeping matter. The
10 defendant provided me a two page note of the research he has
11 done with respect to this motion. He asks that I provide that
12 to you for consideration. He's aware that I have filed a brief
13 and the government has filed a brief. I'll provide a copy to
14 the government.

15 THE COURT: I'm always happy to look at more
16 research, you can bring it up to me. Give it to my clerk,
17 because I'm going to rule right now. This is going to be an
18 order -- do you have a copy of what the defendant prepared?

19 MR. TRABOLD: I do not, your Honor. I'm perfectly
20 willing to accept a copy from the court and counsel subsequent
21 to the hearing.

22 THE COURT: We'll do that. In fairness, before I
23 rule on this, is there anything that anybody wants to say to me
24 now that the evidence has been taken; do you have anything you
25 want to say?

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1 MR. TRABOLD: Your Honor, I don't have anything
2 beyond the papers that the government has filed. I think it
3 crystallizes our position.

4 THE COURT: How about you?

5 MR. SCHROEDER: Your Honor, the defendant would
6 stand on the motion, the brief that we filed, and the record of
7 this case that we have heard for the last several hours.

8 THE COURT: All right. This is going to be an
9 order.

10 ORDER

11 The defendant moves to suppress items seized from
12 the residence and garage located at 19845 Hill Road,

13 Saegertown, PA. Having heard the testimony and reviewed the
14 evidence at the suppression hearing, the following are my
15 findings of fact.

16 On or about April the 9th of 2003, Officer Randy
17 Detzel received information that the defendant, Mo Foley, was
18 living in Saegertown, PA and possibly involved in drug
19 distribution. Specifically, he was informed that the
20 defendant, who was a fugitive or absconder at that time, having
21 previously been placed on parole and then left approximately
22 three years earlier, was living with his girlfriend, Christina
23 Weber, at the previously-described address. The testimony also
24 indicates that the informant described with some particularity
25 the layout of the premises, describing it as a two-story house

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1 with a large detached garage.

2 On or about April the 17th, 2003, Agent Bill Wehrle,
3 a parole officer, had a discussion with Officer Randy Detzel
4 relative to the information that Detzel had secured from his
5 confidential informant. Pennsylvania State Police were
6 subsequently contacted to provide additional support.

7 Information was obtained prior to the police proceeding to the
8 residence that numerous people could be present at the
9 structure.

10 After a preliminary stake out of the residence,
11 which revealed, among other things, the arrival of three
12 different types of vehicles, the officers arrived at the scene
13 sometime between 10, 10:15 p.m. Initially, Agent Wehrle and a
14 number of other officers proceeded to the residence. They
15 knocked on the door, announced their purpose, and the door was
16 answered by an individual later identified as Christina Weber.
17 She informed the officers that Foley was not there. However,
18 she indicated that a girlfriend of hers was. That individual,
19 Angela Carbone, upon questioning said that her boyfriend, Paul
20 Butler, was in the garage. Both individuals were advised
21 during the course of this initial encounter that they would or
22 could be arrested if they were hindering the apprehension or
23 arrest of the defendant.

24 At that point Agent Wehrle and Agent Verga proceeded
25 to the garage. Agent Wehrle knocked on the garage door several

1 times. While he was knocking, the lights and engine of a black
2 pickup truck, which was parked immediately in front of the bay
3 of the garage suddenly activated. And an individual opened the
4 door and Agent Wehrle immediately brought him to the ground and
5 secured him. This individual, if memory serves, would later be
6 identified as Butler. Agent Wehrle then proceeded to enter the
7 interior of the garage. As he did so, he observed a pair of
8 legs descending on a ladder from the second floor of the garage
9 to the first. At that point he secured that individual and
10 handcuffed him.

11 Shortly after entering the garage, Agent Wehrle and
12 others observed in plain view the following material or
13 contraband. A triple beam scale. Several plastic baggies.
14 Marijuana residue. A compact disc case with white powder on
15 it. And in the vicinity of the door to the garage, a bag of
16 suspected marijuana.

17 Having secured the individual on the ladder, Agent
18 Wehrle then proceeded to the second floor, crawling up a ladder
19 and then entering the second-floor loft area through a trap
20 door. He testified that he performed a protective sweep of
21 that area and while so doing, observed in plain view a 12-gauge

22 shotgun, and an open box containing marijuana seeds. Shortly
23 after Agent Wehrle and the other officers entered the garage, a
24 commotion or yelling was heard outside. Shortly thereafter,
25 one of the other officers entered the garage and advised that

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1 the defendant Foley had been apprehended while attempting to
2 escape through the back.

3 Subsequent to the sweep of the premises in the
4 garage and the securing of the individuals there, Agent Wehrle,
5 along with three or four other officers, returned to the
6 residence. Let me digress and say briefly that -- in addition
7 to having been informed that Mr. Butler was present in the
8 garage and having been informed that Mr. Foley was not there
9 by Christina Weber, I also find, based upon the uncontradicted
10 testimony, that the officers at that time requested of Ms.
11 Weber the right to search the premises, that is the residence,
12 which she denied.

13 In any event, Agent Wehrle and the three or four
14 other officers then returned. When they returned, they advised
15 her of the arrests. When they returned, Agent Wehrle had his

16 gun drawn, as did at least one of the other officers. Agent
17 Wehrle inquired as to whether a "search of the premises for the
18 officers' protection could be conducted." And Ms. Weber
19 permitted the officers to enter. She was asked by Agent Wehrle
20 where Foley's bedroom was and was conducted to it. In the
21 bedroom he found a fully loaded Mossburg 20-gauge shotgun,
22 AK-47 ammunition, magazine clips, various drug paraphernalia,
23 and an Army tool kit containing some type of ammunition.

24 Shortly thereafter, a search warrant was obtained on
25 April the 18th from the local district justice. The affidavit

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1 of probable cause for the search recited in large measure the
2 events I previously described, and in the interest of brevity,
3 I incorporate it herein by reference as is fully set forth.

4 While the Fourth Amendment normally requires both
5 probable cause and a warrant prior to governmental officials
6 performing a search, that is not the case with respect with to
7 parolees. As stated in United_States_v._Baker, 221 F.3d 438

8 (3rd Cir. 2000):

9 "In the case of parolees, however, the requisite

10 level of suspicion is reduced and a warrant is not required.

11 In *Griffin_v._Wisconsin*, 483 U.S. 868, 871-72 (1987), a

12 Wisconsin statute authorized probation officers to conduct

13 warrantless searches of probationers' homes when there were

14 'reasonable grounds' to believe that contraband would be found

15 there. The court found that the operation of a state's

16 probation system presented 'special needs', beyond the need for

17 law enforcement, justifying an exception to the warrant and

18 probable cause requirements of the Fourth Amendment."

19 The Baker court then continued:

20 "It is reasonable to allow a parole officer to

21 search whenever he reasonably believes that it is necessary to

22 perform his duties. The decision to search must be based on

23 'specific facts', that the officer need not possess probable

24 cause." Citing *Terry_v._Ohio*, 392 U.S. 1 (1968).

25 Now, in determining whether the officers had a

1 reasonable suspicion, it is necessary to view the matter

2 through the prism of the totality of the circumstances.

3 Insofar as the confidential informant is important on the

4 question of reasonable suspicion and, of course, in this case

5 he or she is, various factors have been identified which are

6 germane to the inquiry. They would include, but not

7 necessarily be limited to, the credibility or veracity of the

8 informant, the basis of the informant's knowledge, and the

9 extent to which the police are able to independently verify the

10 reliability of the tip. See United_States_v._Leos-Quijada,

11 107 F.3d 786, 792 (10th Cir. 1997).

12 In this case, first, it was uncontroverted that

13 Foley was in violation of his parole by walking away from a

14 work release detail a number of years earlier. With respect to

15 the informant's information regarding Foley's location, as well

16 as his possible involvement in drug distribution, I find that

17 under the totality of the circumstances that it bears a

18 sufficient indicia of reliability.

19 Here, there was testimony from the police officer

20 that he knew this informant. There was also testimony from the

21 police officer that he had worked with this informant several

22 times in the past, and that the informant had always on

23 previous occasions provided accurate information concerning the

24 criminal activities of others.

25 In addition, I note that the information that was

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1 supplied was somewhat specific and ultimately at least in part

2 verifiable. The description of the premises, as described by

3 the informant, was subsequently checked out and the

4 configuration of the structures on the premises were consistent

5 therewith.

6 Now, as previously indicated, when the officers

7 entered the garage, the following items were almost immediately

8 in plain view. The triple beam scale, large ziploc bags,

9 marijuana residue on the floor, and a compact disc covered with

10 what appeared to be white powder. And, as I previously

11 indicated, having observed a man climbing down a ladder from

12 the second floor, Agent Wehrle climbed to the second floor to

13 perform what he characterized as a protective sweep of that

14 area. And recovered a shotgun and an open box containing

15 marijuana seeds.

16 At this point, then, it's appropriate to say a few

17 words on the law relative to protective sweeps. In Maryland_v.

18 Buie, 494 U.S. 325 (1990), the court stated the following with

19 respect to a protective sweep relative to an in-home arrest:

20 "We hold that as an incident to the arrest the

21 officers could as a precautionary matter and without probable

22 cause or reasonable suspicion look in closets and other spaces

23 immediately adjoining the place of arrest for which an attack

24 would be immediately launched. Beyond that, however, we hold

25 that there must be articulable facts which taken together with

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1 the rational inferences from these facts would warrant a

2 reasonable prudent officer in believing that the area to be

3 swept harbors an individual posing a danger to those on the

4 arrest scene." The court concluded by stating:

5 "The Fourth Amendment permits a properly limited

6 protective sweep in conjunction with an in-home arrest when the

7 searching officer processes a reasonable belief based on

8 specific and articulable facts that the area to be swept

9 harbors an individual posing a danger to those on the arrest

10 scene. That's Id. at 334 and 336.

11 In *Sharrar v. Felsing*, 128 F.3d 810, (3rd. Cir.

12 1997), the court had the occasion to address the principles

13 announced in *Buie* in the context of an arrest that occurred

14 outside the residence. The *Sharrar* court observed:

15 "Although this court has never ruled on the

16 circumstances in which a protective sweep of a home, as defined

17 in *Buie*, would be permissible as incident to an arrest

18 occurring just outside the home, those circuits that have

19 addressed the issue have uniformly held that the reasoning of

20 *Buie* is also applicable and that under those circumstances,

21 protective sweeps of the home in such situations are not per se

22 unreasonable." Citing cases.

23 "Those courts also agree that a sweep incident to an

24 arrest occurring just outside the home must be analyzed under

25 the second prong of the *Buie* analysis requiring 'articulable

1 facts which, taken together with the rational inferences from
2 those facts, would warrant a reasonably prudent officer in
3 believing that the area to be swept harbors an individual
4 posing a danger to those on the arrest scene."

5 Finally, the court in Sharrar observed:

6 "The reasonable possibility that an associate of the
7 arrestees remains at large to do mischief or cause danger to
8 the officers is the salient, although not necessarily only,
9 concern for which a warrantless protective sweep is justified.

10 Now, in Sharrar, the court noted that the police

11 were aware that the defendant's confederates who had been with
12 the defendant were out of the house and in custody. The court
13 concluded that the officers who swept the house had no
14 articulable facts to conclude that dangerous individuals
15 potentially remained in the building who could pose a threat to
16 the officers. The Sharrar court stressed that a protective

17 sweep cannot be based on speculation and it cannot be based on
18 no information.

19 Here, if I haven't said it already, let me, the
20 officers had an arrest warrant. There was, in my view,

21 reasonable suspicion, based upon the information previously
22 provided by the informant, that the parolee absconder was
23 present on the premises.

24 Here, the evidence reveals that the actual arrest
25 was effected immediately behind the garage. Upon entering the

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1 premises, the police officers were immediately confronted with
2 not only one, but a second individual crawling down from the
3 loft. They had already observed in plain view drug
4 paraphernalia. They had just been startled by the dark vehicle
5 suddenly apparently being activated by a remote control device.
6 It was, in my view, under the previously-described case law
7 relative to protective sweeps imminently reasonable for Agent
8 Wehrle to conduct a protective sweep of the second-floor loft
9 area which was in every meaningful sense immediately adjacent,
10 albeit immediately above, the area where the other officers
11 were operating. To determine under the circumstances whether
12 any threat from Mr. Foley or any of the other individual
13 confederates might exist in those areas.

14 In short, then, I find that the search that --

15 let me put it in logical steps. In short, then, I find that
16 the contraband identified during the search of the garage was
17 entirely proper. The officers were armed with a warrant for
18 arrest, they knocked and the door was answered. Immediately
19 upon entering, the contraband was seen in plain view and for
20 the reasons previously indicated, I find that the protective
21 sweep, which revealed the presence of other contraband material
22 on the second floor, was justified.

23 I now turn to the propriety of the search of the
24 main residence. The government here relies in part on the
25 doctrine of consent to justify its warrantless search of the

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1 actual residence. Before I forget, as a factual matter let me
2 say having looked at the photographs of both the detached
3 garage/barn and the residence, as well as listened to the
4 testimony, a considerable distance exists between the two,
5 and as a matter of fact the barn appears to sit at a different
6 elevation than the residence.

7 In any event that said, in U.S. v. Kim, 27 F.3d 947

8 (3rd Cir. 1994), the Third Circuit stated the following:

9 "As the Supreme Court instructed, 'when a prosecutor
10 seeks to rely upon consent to justify the lawfulness of a
11 search, he has the burden of proving that the consent was, in
12 fact, freely and voluntarily given.'" Schneckloth, 412 U.S. at
13 222. "Whether a consent to a search was in fact 'voluntary' or
14 was the product of duress or coercion, expressed or implied, is
15 a question of fact to be determined from the totality of the
16 circumstances. Thus whether consent was given is to be
17 resolved by examining all relevant factors, without giving
18 dispositive effect to any single criteria. Certain factors
19 that courts consider in determining whether confessions were
20 voluntary, such as the age of the accused, his education, his
21 intelligence, whether he was advised of his constitutional
22 rights, and whether the request was repeated or prolonged, are
23 relevant to our examination." Citing United_States_v.

24 Velasquez, 885 F.2d 1076 (3rd Cir. 1989). And that's Id. at

25 955.

1 Here, having carefully considered the testimony and
2 applying the previously-described factors relative to the
3 totality of the circumstances, I find that Christina Weber's
4 consent to search was not voluntary. And I do so on the basis
5 of the following. Evidence here reflects that upon the
6 policemen's encounter with her, she refused access to the
7 house. At that time she was advised, as well as was Ms.
8 Carbone, that they would be arrested if they were found to be
9 harboring a defendant or interfering with his arrest.
10 Subsequently, and after approximately seven officers had
11 arrived on the scene, at least three or four officers returned
12 and informed Ms. Weber that Mr. Foley and others had been
13 arrested. At least one, if not more officers, had guns drawn,
14 but not pointed in the direction of Ms. Weber. The evidence on
15 record is completely devoid as to any evidence concerning her
16 age, her sophistication, her previous contact with the criminal
17 justice system. There has been testimony that she was informed
18 that she could refuse consent. For purposes of this hearing, I
19 will accept that testimony as true. That said, under the
20 totality of the circumstances, the previous denial, the guns
21 drawn, and the large number of police present at the scene that

22 night, and in the absence of any other information concerning
23 those other relevant points, I cannot say and do not find that
24 the consent was voluntary.

25 Alternatively, the government contends that a search

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1 of the premises, that is the search of the residence was
2 justified as a protective sweep. Under the
3 previously-described case law, I do not find that it was.
4 By the time that search took place, the parolee was already
5 under arrest. The garage area had been secured and the
6 policemen who had participated in securing the garage were a
7 considerable distance away from the residence. In short, the
8 law does not permit police officers to place themselves back in
9 harms way in order to effectuate a protective sweep.

10 That said, however, it is also well-settled that
11 even assuming that some portions of an affidavit are tainted,
12 it does not necessarily vitiate a warrant which is otherwise
13 validly issued upon probable cause reflected in the affidavit.
14 See, for example, United_States_v._Burton, 288 F.3d 91, 103

15 (3rd Cir. 2002). In other words, the test that the court is

16 required to perform, in my view, is to excise from the
17 affidavit all references -- let me say that again so it's more
18 specific to this case. In other words, the exercise that I'm
19 required to perform here, in my view, is to excise from the
20 affidavit all references to contraband or incriminating
21 evidence that was located in the residence, and then determine
22 whether the other evidence, remaining evidence in the
23 affidavit, would have been sufficient to support a warrant, of
24 a search warrant in any event.

25 In my view, the contraband which was located within

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1 the garage, coupled with Foley's parolee's status, and
2 particularly in light of my previous conclusion that the
3 officers were legitimately in the garage and legitimately swept
4 it, independently supports the affiant of probable cause. In
5 the interest of completeness, I incorporate by reference as is
6 fully set forth the contents of the affidavit of probable
7 cause, up to and including page two, which concludes with the
8 following sentence. "This officer field tested the white
9 crystalline substance and the results were positive for

10 methamphetamine. This officer also field tested the green
11 vegetable matter and the results were positive for marijuana."

12 To be clear, then, while I find that a search
13 predicated upon either consent or under the doctrine of
14 protective sweep with respect to the residence was
15 constitutionally infirm, I also find that the information in
16 the affidavit obtained in connection with the garage search was
17 independently adequate to support the issuance of the warrant.

18 And so, for all those reasons, the motion to
19 suppress is denied.

20

21 (Whereupon, at 2:58 p.m., the Suppression Hearing
22 was concluded.)

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1 C E R T I F I C A T E

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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13 Ronald J. Bench

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